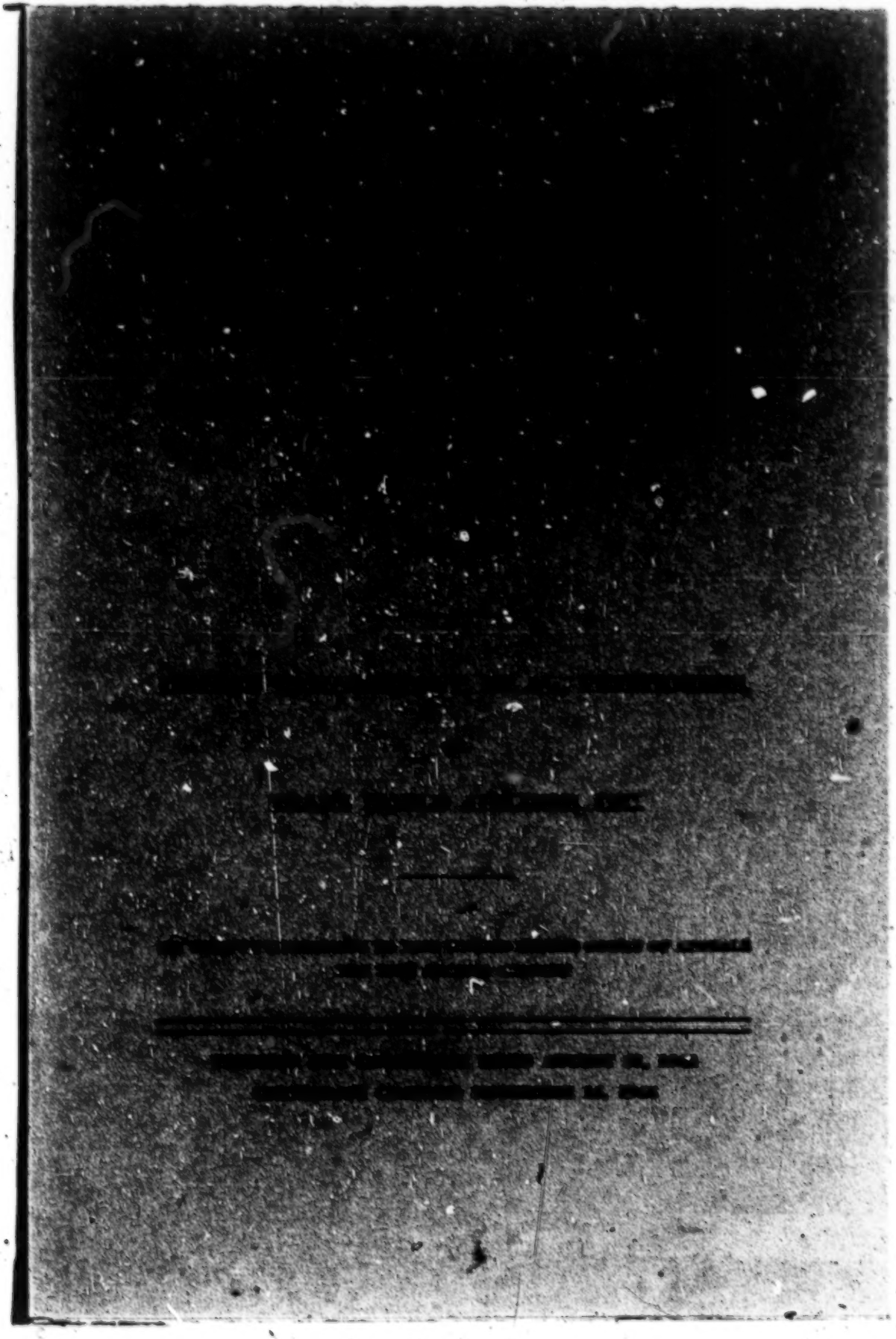

28405

No. 443

Office Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 28405

TRANS WORLD AIRLINES, INC.,
Plaintiff-Appellee,

against

HOWARD R. HUGHES,
Defendant,

and

HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY,
Defendants-Appellants.

APPENDIX TO BRIEF OF DEFENDANTS-APPELLANTS HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY

Volume II — Pages A-471 to End

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Dated: September 9, 1963

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

VOLUME II

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[14683]

[Testimony—October 18, 1962]

• • •

Q Let me read to you a portion of Mr. Pierson's [14684] testimony before the CAB in the Further Control case, Mr. Cocke, and see if that will refresh your recollection in any way, and also for the purpose of my asking you a question as to whether or not you agree with the facts there stated.

> Mr. Hupper: Can you identify the date of this testimony for my personal information?
>
> Mr. Davis: It is the first time I am referring to it. It was a hearing which was held at the Federal Building, in Los Angeles, on October 3, 1949. The hearing in this matter was convened at 10 o'clock that morning of that date. This is in the matter of transactions between Hughes Tool Company and Transcontinental Western Air, Inc., Docket No. 2796, which was part of the record that was the basis for the Examiner's report, which has already been marked as Defendants' Exhibit 130.

By Mr. Davis:

Q Mr. Cocke, I am going to start at page 25 of the transcript. This is Mr. Pierson testifying. He referred first to the Finletter Committee report.

Are you familiar with the Finletter Committee report that was issued relating to the problems of airlines and the financing of equipment by airlines?

[14685] A I don't recall it, no.

Q After referring to that the witness said:

> "Well, the part that interested me particularly in the report was what the committee had to say

about airline finance. If I may read two very brief paragraphs beginning at the bottom of page 116: 'The airlines have traditionally operated on low working capital. Moreover, current assets accumulated during the war years were depleted by the purchase of new airplanes and by operating losses. Loans secured by equipment are difficult to obtain in the air transport field. Railroads are able to secure financial aid to buy new equipment through the sale of equipment trust certificates at low interest rates without restrictions on their operations or finances.

'It would be desirable if the equipment trust method of financing so successful with railroads could be used for the purchase of air transport equipment.'

"Then the question was "Has there been a substantial improvement in the condition of TWA since April 1957?'

"Yes, there has. I might, if I may, refer to some figures here, and make a more responsive answer. The company's net worth, Mr. Examiner, on September 30, 1945, was over $18.5 million. That net worth had [14686] fallen by the end of 1946 to something under $4 million. By the end of 1947 there was a deficit figure of net worth, deficit in something substantially over $3 million. As of the first half of this year the net worth has returned to something in excess of $12 million, and as of the present day, the figure is somewhat better than that. So we have gone from $18.5 million in September 1945 down to a deficit of $4 million, back to a net worth of something in excess of $12 million."

Do you have any recollection whatever with respect to the financial condition of TWA from 1945 through 1947, or thereabouts, comparable to this testimony of Mr. Pierson.

A I would accept Mr. Pierson's testimony in the case.

Q You don't have any personal independent recollection of these facts, is that correct?

A I knew this was true, yes.

Q Did you ever discuss with anyone at TWA the problem of the financing of aircraft equipment?

A Only so far as the discussions that have taken place at the board of directors meetings, and at this time, of course, as vice-president of sales I wasn't involved in the financial problems of the company as part of my duties.

[14687] Q Turning to page 27, and continuing that same line of testimony, but skipping some—there is a reference there to a letter agreement of January 8, 1947 between the Tool Company and TWA. Are you familiar with what that relates to?

A No, I am not.

Q That related to that $10 million commitment subscription, or that doesn't mean anything to you, does it?

A No, I don't recall that.

Q On page 27, still with Mr. Pierson, the question was:

"Q What in your opinion has that improvement been due to?

"A Well, it has been due to several things. The successful carrying out of our two major objectives, cutting costs and increasing our mail pay. We have also improved our operating techniques during this period. A fourth item of particular importance has been—or of major importance—has been the assistance we have secured from Mr. Howard Hughes or, rather, Mr. Howard Hughes' company, the Hughes Tool Company.

"Since the time I have been with the company we have had the wholehearted support of Mr. Hughes [14688] and his company. The most important item of that support being, of course, the purchase by Hughes Tool Company of $10 million of convertible—

> $10 million stock following the original letter of January 8th, which provided for a loan in that amount.
>
> "More recently—I believe it was February of this year—there was an underwriting of some $4 million sales value of our common stock, and in connection with that underwriting the Hughes Tool Company took its percentage which was—I guess it was in round numbers, $3 million."

Were you aware of the period when the objective was to cut costs and seek to obtain an increase in mail pay?

A Yes, I was.

Q Can you describe how those objectives were developed?

A In the reduction of all possible necessary expense that would not affect safety, would not cripple the sales effort.

Q Do you know from whence those directives or objectives came—the origin of either the directive or the objective?

A I believe they came from Mr. Damon, the chief executive officer of the company.

[14689] Q That was not an objective during the Frye regime?

A Yes. We had several periods during the Frye regime when the effort was made to reduce costs.

Q But is it your testimony that that objective was intensified with the Damon regime as compared to the Frye regime?

A I don't recall any intensification, as you term it.

Q Let me refer a little more to Mr. Pierson's testimony, because it goes into equipment. The next question reads:

> "Q In connection with our recent underwriting of stock, when the underwriting was first proposed,

did the underwriters say it could or could not be done without the assistance of Hughes Tool Company?

"A Well, they said it could not be done unless Hughes Tool Company would agree to take its proportion of the stock which was substantially three-quarters.

"Q Did the underwriters believe that TWA would be unable to market that common stock at $10 million unless Hughes Tool Company agreed to take its full portion of it at that price?

"A That was their statement."

Did you have any knowledge or information whatever of any [14690] kind relating to the underwriting referred to by Mr. Pierson?

A I don't recall any.

Q Did anyone at TWA ever discuss with you or tell you about this underwriting or effort to obtain an underwriting for $10 million worth of stock?

A I was certainly aware of it at the time, but I don't recall the details on it.

Q At the time you were aware of it but you just don't remember the details now, is that it?

A That's correct.

Q Do you recall discussions within the management group of TWA to the effect that the underwriters were taking the position that they could not or would not underwrite without the assistance of the Hughes Tool Company?

A I don't recall any discussions.

Q You do not recall any discussions to that effect?

A No.

Q You were never told that by anyone?

A I testified that I am sure I was aware of it at the time, but I don't recall any discussions about it.

Q Did anyone ever tell you anything inconsistent with Mr. Pierson's testimony that I have just read to you?

Cocke Deposition:

A Not that I recall.

[14691] Q Let me read to you the next question and answer of Mr. Pierson. I am still at page 28. The question was:

"Q But, in other words, it was Hughes Tool Company's purchase of its full quota that supported the market for the whole issue, and made it possible to sell the whole issue of stock at that time, was it not?

"A It was. I might go on with my answer as to what has been done to help the company since January"—we will put it of 1947. "We have carried out an aggressive program of increasing our equipment.

"In March of 1947 we added four Constellations largely as a result of the funds which were advanced by the Hughes Tool Company.

"Later in the year we purchased an additional two Constellations. In early 1948 we entered into an arrangement with Lockheed, financed by a group of banks for the purchase of twelve Constellations and, more recently, we have placed an order again through Lockheed and substantially the same group of banks for a further twenty Constellations, so since January of 1947, Mr. Examiner, we have added or will have added, when we get delivery, thirty-eight modern Constellations to TWA's fleet, international and domestic."

[14692] Then the examiner took a five-minute recess.

Are you familiar with the program that was undertaken on or about January 1947, relating to additions to the air fleet of TWA?

A The testimony you read me brings to my recollection that these things happened, but I have no personal recollection of discussions.

• • •

[14905]

[Testimony—October 22, 1962]

* * *

Q During the so-called Damon regime do you recall some instances when Mr. Damon participated in any of these discussions relating to aircraft acquisitions or planning for the acquisition of aircraft?

A Yes, we had meetings.

Q Can you describe some of them for me?

A I don't recall the details.

Q Without going into the details, can you give us what your best recollection is?

A We would have a meeting. If everyone agreed, it was fine. If there were disagreements, they were discussed pro and con, try to come up with the best recommendation for the company.

Q Do you have in mind any particular meeting or a particular time when this process took place?

A It was a continuing process, to my recollection.

Q Do you recall at any time anybody saying, "Well, there is no point in discussing this, because this is what Mr. Hughes wants, and we have got to do what Mr. Hughes [14906] says, and therefore why debate the question"—did that ever happen?

A I don't recall that statement being made.

Q Anything comparable to it which to you meant the same thing?

A Certainly Mr. Hughes' interest in equipment was well known. I don't recall at any time anyone said, "You can't do this, you can't do that."

Q So far as you are concerned, Mr. Cocke, were the recommendations which you made always what you honestly believed was in the best interest of TWA?

A My recommendations were, yes.

Cocke Deposition.

Q And so far as you are concerned, no one ever tried to influence you one way or the other, other than to give you whatever facts you obtained from others within TWA?

A No, I think I would have to say that where I was in disagreement somebody tried to sell me what they thought were the benefits of what their recommendation was.

Q Do you have any recollection of any instance when Mr. Hughes or the Hughes Tool Company tried to sell you something?

A Yes. I recall discussing Constellations as opposed to Douglas aircraft

Q What do you have reference to now?

[4907] A I believe at one time there was a difference of opinion as to whether we should buy Douglases or Constellations.

Q Can you identify that a little bit more specifically, what kind of Douglas you are referring to, what type of aircraft—

A I think they were the DC-6s.

Q DC-6?

A Yes.

Q Versus which Constellation, do you recall?

A I don't recall which one, whether it was the 1049 or the—I believe it was 1049.

Q Now describe this difference of opinion which existed, and who held which point of view.

A I believe in this period I think Mr. Hughes was interested in the Douglases. I recall Mr. Damon and I were opposed to Douglas, wanted to continue with the Constellation line.

Q Which point of view prevailed?

A I don't know of which point I prevailed, but we bought Constellations.

Q I didn't mean to say at which point you prevailed. I was asking you whose point of view in the end prevailed.

I gather from your last answer yours or Mr. [14908] Damon's point of view prevailed over that of Mr. Hughes?

A Yes.

Q Do you recall any other time when Mr. Hughes or the Hughes Tool Company, to your knowledge, expressed a preference as to the type of aircraft that TWA should procure or plan in procuring?

A I do recall a question of a 1449 Constellation series, which were originally—which was originally conceived as a turboprop airplane.

My recollection is Mr. Damon was opposed to that airplane. I believe Mr. Hughes, as I recall, and the Hughes Tool Company members of the Board were in favor of that airplane.

Q Can you tell me what happened then?

A The 1449s were purchased, they were ordered.

Q By Hughes Tool Company?

A I believe so, yes.

Q Are you referring to the aircraft which subsequently was modified to the 1549 and thereafter to the 1649?

A It finally came out as the 1649.

Q Did it come out a a turboprop airplane?

A It did not.

Q Were you or Mr. Damon opposed to the acquisition [14909] of the 1649?

A I think I testified that Mr. Damon, as I recall, was opposed to the 1449; and I just don't recall whether he passed away before the 1649 was acquired or not.

Q What do you recall about the decision to acquire the 1649 in lieu of the 1449?

A Well, the 1449, as I stated, to my recollection, was to be a turbo-propeller aircraft. The engines, turboprop engines, did not develop.

As time went on, the airplane, I guess, to use my terms, drifted into a 1649. My recollection is by that time

the 1649 was the best we could see so far as delivery positions were concerned to acquire an aircraft that we needed.

Q Can you tell me what type of aircraft you or Mr. Damon were favoring in lieu of the 1449 at the time that the order was placed?

A I was not opposed to the 1449.

Q You were in favor of the 1449?

A Yes.

Q Can you describe a little more fully what was taking place at that time, the pros and cons that were being advanced?

A I believe this was at the time of the question of DC-7s or to continue the Constellation group. I personally [14910] was opposed to changing from the Constellation group. My recollection is that I believe Mr. Damon, I think Mr. Rummel, favored the DC-7s.

Q Can you explain what reasons they advanced for favoring the DC-7 and the reasons that you had for being opposed to the change, what views, if any, were being expressed by Mr. Hughes or anyone else in this difference of opinion?

A As I recall, it was a difference of opinion between myself and Mr. Damon. I felt that TWA had been operating Constellations since the first real four engine transport came along.

That is the reason I was in favor of Constellations over DC-6s. I felt that our image was a Constellation airline.

We were the only transcontinental operator using Constellations. I felt that perhaps the newer Constellations would be technically as competitive with the Douglas series. That did not turn out to be right.

Q Did anyone try to influence that point of view, the point of view you held, which you just described, or was that something which was a result of the development of the thinking of your department?

A I think my feeling was shared by the Sales Depart-
[14911] ment.

Q My question is whether or not, to be more specific, Mr. Hughes or the Hughes Tool Company or any representative of the Hughes Tool Company attempted to influence your judgment or conclusions, and if so, how was it done or who did it, the circumstances.

A There were discussions at the Board meetings. I recall making my feeling known on the Constellations to Mr. Damon and Mr. Collings, I recall discussing it with Mr. Hughes, in which I took the position I felt we were a Constellation airline, and our sales effort was beamed to the Constellation.

I made my opinions known. Certainly people that disagreed with me made their opinions known to me.

Q You referred to a discussion with Mr. Hughes at that time and making your opinions known. Can you tell me what your complete recollection is of those discussions, if there was more than one, what you said and what he said, what took place?

A I recall making my pitch, if you want to call it that, my feelings known, that we would be making a mistake to shift to Douglases.

I believe at one time Mr. Hughes made the comment that perhaps the Constellation was going to be slower than
[14912] the Douglas.

I took the position, not being a technical person, I felt that the Constellations, if they weren't as fast, would be so—it would be such a small amount of difference that it really wouldn't affect the transcontinental schedule.

I recall Mr. Hughes saying that speed was extremely important, with which I agreed, and as it turned out, the Constellations didn't—weren't as fast as at least I had expected them to be.

Q Mr. Rummel has testified at some length as to the fact that the 1649 did not turn out to meet the standards which were anticipated at the time that they were procured or ordered.

I am interested in the completeness, however, of your recollection of what was said to you and what you said to either Mr. Hughes or any other representative of the Hughes Tool Company.

Have you given us now the total of your recollection—

A My recollection, as I testified, it was based around the speed of the aircraft and my feeling that we shouldn't change our whole sales approach and go to Boeing—excuse me—go to Douglas.

[14913] Q Can you, before we adjourn for the luncheon recess, identify any other instance in addition to the two that you have testified about?

A I don't recall any.

* * *

[Testimony—October 23, 1962]

* * *

[15055] Q Can you tell me with whom you discussed your views and the conclusions of your department as to TWA's needs? Can you tell me that much?

A I discussed it with the chief executive officer.

Q Mr. Damon?

A Mr. Damon. I discussed it certainly with the other members of management—Mr. Rummel, Mr. Collings. I am sure I had discussions with Mr. Hughes, him asking me what I thought of the probable berths, and what the general trend was, and I would give him, as others, the opinion I had at that time.

Q Do you recall any particular discussion with Mr. Hughes on this general subject, other than what you have already identified or described?

A No. There were numbers of discussions that had to do with the question of how attractive berths were, or what I thought the public thought of this airplane or that airplane. I don't recall the discussions.

Q Can you tell us what views, if any, Mr. Hughes expressed to you directly or indirectly in the area in which you were interested?

A I had expressed my opinion. We would have some [15056] discussion about it. Sometimes he would agree with me and sometimes he would not.

Q Can you give me an idea of the nature of the disagreement, and what happened when you disagreed?

A I don't know.

Q You can't recall any situation when there was a disagreement between you and Mr. Hughes as to the type or quantity of equipment to be obtained, other than what you have already identified to date?

A I think that is all I recall, yes.

Q Do you have any recollection of any discussion with Mr. Hughes relative to what you were considering at this time, namely, in the latter part of 1949 or early 1950, relative to the Boeings or DC-6Bs, or various types of Constellations?

A I am sure I discussed them with him, but I don't recollect the discussions.

Q Do you recall any instance when TWA acquired some aircraft, types of aircraft, to which you were opposed?

A No, I do not.

* * *

[Testimony—November 19, 1962]

* * *

[15922] Q You refer there to an extended trip overseas. Did that trip overseas involve in any way an inquiry or

investigation of available equipment? I have particular reference to an entry in your diary which I note on March 28th.

Let me pursue it this way: I notice on March 28th you have an entry indicating that you rode in a Comet—on both March 28th and March 29th.

A Yes.

Q My question still is whether or not prior to March 1st, in connection with this extended trip that you had overseas, did that involve looking at or inquiring into available aircraft from foreign sources?

A No, it did not.

Q Then see what entries, if any, in your diary give you any recollection which leads up to this event relating to Comets.

A It was decided early in this year that we would hold a Board of Directors meeting in London. I felt that it would be desirable to have the directors have an opportunity of seeing the Comet and riding in the Comet, and several flights were made. I was interested [15923] in the possibility of perhaps TWA making some commitments for the Comets at that time. Fortunately, they didn't accept my recommendation.

Q In other words, some time prior to that time you had developed an interest in the Comet as a possible type of aircraft to be added to TWA's fleet?

A Put it this way: It was the first jet transport, and was being operated by BOAC out of London. Being the first jet it took the public fancy, naturally, and as the vice-president-sales, I felt if we could find our way clear of getting some Comets, we would have something that would have real value to it.

Q Did you try to arrange for a meeting of the Board of directors in London so that they could have an opportunity of looking at this new type of aircraft?

A No. I think it was just a coincidence that it happened. I had been anxious for our Board to hold a meeting in Europe for public relations purposes. In fact, I think that was the first meeting that an American company held overseas. It just happened that while we were in London, we were able to arrange with DeHavilland for the Board members to take a flight in a Comet.

Q Did that happen both on Wednesday, March 28th, and Thursday, March 29th?

[15924] A Yes. There were two flights operated, one on Wednesday and one on Thursday. Some of the directors rode on it one day and some the next day.

Q At that time did anyone arrange for meetings or discussions or conversations with DeHavilland with respect to the possible interest of TWA?

A I don't believe it ever progressed that far.

Q Do you recall whether or not any particular report was made to the Board by anyone—Mr. Rummel?

A I don't recall any.

Q Have you ever had any conversations or communications of any kind whatever with Mr. Hughes or Mr. Dietrich or anyone whom you associated as a representative of the Hughes Tool Company, relative to this interest or possible interest in the Comet?

A I probably would have had with Mr. Dietrich. I believe he was on the Board at that time. I don't recall whether he attended the London meeting or not. I don't recall any conversations with Mr. Hughes on the Comet.

[15925] Q Did your desire for a jet transport, for a Comet, reach the point where you made a presentation to the board with respect to it, or recommendation to anyone?

A I don't think it progressed that far.

Q It was just in the discussion stage within TWA management?

A Yes. At the same time—

Mr. Williams: The witness didn't say that.

Mr. Davis: He testified a moment ago that he made a recommendation which he was glad didn't go through, or something of the sort.

The Witness: Not accepted, yet.

Mr. Williams: I didn't think there had been discussion at a Board of Directors meeting about it.

Mr. Davis: I said within TWA management.

By Mr. Davis:

Q Let me put the question to you this way: Will you give us as full a description as you can of what conclusion or recommendation you made, and to whom, and what discussions took place relative to the Comet?

A I think I have stated before that there were no serious discussions. The very fact of our Board of Directors meeting in London, and riding in the Comet gave TWA a lot of publicity. The British were proud of the air-

[15926] plane and were anxious to sell it. I, as vice-president of sales, would have liked to have seen TWA buy some Comets.

My recommendation went no further than that. I don't recall any detailed discussion of financing possibilities, or engineering studies.

Q Do you recall any conversations or discussions with either Mr. Rummel or Mr. Damon or Mr. Collings?

A Only that I felt that I would like to see TWA get some Comets.

* * *

[15936] Q Mr. Cocke, during the recess have you had an opportunity to review Defendants' Exhibit 252?

A I have.

Q Do you recall the request that was made of you to prepare such a forecast of aircraft requirements through the year 1955?

A I don't recall the request. Specifically I was requested to make equipment forecasts a number of times. I don't recall specifically this one forecast.

Q Was this something that reflected the independent views and opinions which you had at the time?

A It does.

Q Was that something prepared by your group and your department?

[15937] A. Yes.

Q And reviewed by you personally?

A Yes.

Q In connection with its preparation did you discuss the matter with other department heads of TWA?

A Not, I don't believe, from the standpoint of the forecast of traffic. I no doubt discussed the types of aircraft with Mr. Rummel as to what would be available.

Q Prior to its preparation did you have any communications of any kind with Mr. Hughes or Mr. Dietrich or anyone whom you regarded as a representative of the Hughes Tool Company?

A No.

Q In other words, these conclusions reflected in Defendants' Exhibit 252 represent something which originated with you and your department?

A Yes.

Q Do you recall whether or not this was something which was the subject of discussion at Executive Committee meetings, apart from directors' meetings.

A It may have been, but I don't recall any discussions.

Q You don't recall any?

A No.

[15938] Q I see you refer to the Korean incident. Was that something which had a bearing on your equipment forecasting?

A It would, yes. Any international disturbances affect international travel.

Q I notice on the first page that you have a number of assumptions there. Can you tell me where those assumptions came from? In other words, were they assumptions that you made, or were they assumptions that were given to you by someone else?

A They were assumptions made mainly by discussions with Mr. Fellows and myself.

Q In other words, those were not assigned assumptions?

A No, they were not.

Q On page 2, the first paragraph starts out by stating that "Our studies indicate that TWA should plan to add a total of 40 additional aircraft of the Constellation 1049C type, or its equivalent to its fleet by 1955."

Can you describe or identify the basis of that conclusion?

A You would have to take, as I think I testified to several times before—you go back to the exhibits [15939] and take the passengers forecasts of what volume the industry will develop, our forecasted share of that volume, convert that into aircraft capacity, a forecast rate of utilization, and you come out with the number of airplanes you need if this market forecast is correct.

Q And this referred to a total of 40 aircraft in addition to those already on order, is that correct?

A I believe so, yes.

Q I note that at the meeting of the Board of Directors of June 29, 1959, Defendants' Exhibit 251, there was a reference to the need of developing a relatively long range program for the acquisition of aircraft and financing. Will you look at Defendants' Exhibit 251, and your report to the board as reflected by the minutes which reads:

> "And emphasize the necessity for the development of both the short range and long range equipment program adequately financed in order to main-

tain the position of the company in both international and domestic operations."

Do you see that?

A Yes.

Q That fairly summarizes what in fact you reported to the board at that time, isn't that right?

[15940] A That is correct.

Q Is this memorandum of July 25, 1951, an implementation of the recommendation made to the board on June 29th?

A I assume it would be, yes.

Q Can you describe a little more fully than what appears in the first paragraph of page 2, the nature of the conclusion you reached? I see some breakdown of these 40 additional aircraft—some reference to air cargo and some reference to DC-4 aircraft. Can you identify or describe a little more fully the nature of the conclusion you reached with respect to the short range and long range program for aircraft acquisition adequately financed, which you felt should be undertaken?

A I don't know how I can add anything more to what I have said. It is purely a function of forecasting the volume in both domestic and international, and dividing that out and finding how many airplanes it comes to.

Q This 1049G, is that the same thing as 1049As or 1049Gs or 1049Hs?

A I am confused at the various letter designations which changed over the years. I would assume that the 1049 is the version of the extended fuselage of the 749-049 type, and that the Cs, Gs and everything up to [15941] the 1649A would be about the same capacity aircraft that you are talking about, with the exception of the possibility of changes in the power plants, whether they be piston driven or turbo prop.

Q At one point when reference was made to 1049H, does "H" denote a cargo plane, or is the 1049H, as you understand it, substantially the same type of aircraft as the 1049G or the 1049A?

A There is some difference in aircraft. The "H" was developed primarily as a cargo aircraft.

Q It was convertible into a coach?

A And also as convertible to cargo and passenger airplane, and had some structural difference, I believe, as far as floor loading was concerned, so it could carry heavy cargo.

Q That 40 additional aircraft which you were recommending on July 25, 1951, you break that down between 21 units for the domestic operation, and 9 units internationally, or a total of 30, and then you refer to the remaining 10 units—to be used in all cargo service replacing the DC-4 aircraft.

Can you identify that aspect of it a little more fully? Were the DC-4s at that time being used in cargo operations? Is that what was taking place?

[15942] A Yes, they were.

Q And you were recommending an improvement in the type of aircraft to be used for this cargo operation?

A Yes. We had DC-4s in all cargo operation. This recommendation envisaged the replacement of the DC-4s by modern cargo aircraft, and as it states, would serve to get one type of an aircraft out of our operation.

Q I notice in the next paragraph that you say "It might be well here to make a few general comments on the overall equipment problem. There appears to be nothing available prior to 1955, but the Lockheed 1049C and the Douglas DC-6-B, both of which are convertible to turbo prop power plants. As there appears to be very little difference between the 1049C and the DC-6-B, it would appear

logical that we would move ahead on the Constellation route.

This decision could, of course, be influenced by substantial differences in price or delivery dates."

Can you tell us what was the basis for your conclusion that nothing appeared to be available prior to 1955 but these two types of aircraft? In other words, was that a conclusion that you reached, or was that something that you were told by someone, or was it based on your general knowledge of what was available?

[15943] A It is a conclusion reached from what information would be available to me. Probably discussions with Rummel, or my general knowledge of the manufacturers, and what was available.

Q Do you know of anyone who was supporting the idea of going to DC-6-Bs rather than continuing with Constellation at this time, in connection with this report?

A I am trying to get the sequence in mind. I believe it was at this time that I understand Mr. Hughes was interested in the Douglas aircraft rather than the Constellations.

Q And the decision that TWA was to go the Constellation route?

A Yes.

Q And that is what in fact TWA did get, isn't it?

A Yes.

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[Testimony—November 20, 1962]

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[15988]

Q Can you describe for me, Mr. Cocke, what discussions you either participated in or were aware of that were going on at that time relative to TWA's needs for equipment, and the steps to be taken in connection therewith?

A I recall nothing beyond what is completely outlined in these documents.

Q Mr. Damon in his memorandum refers to American's procurement of DC-7s and their speed advantage. Was that something you were concerned about?

A What page is that on?

Q I notice that on page 4.

Mr. Williams: Which exhibit?

Mr. Davis: Exhibit 173.

A Yes, I would say that the DC-7 speed advantage was a worry to me, and I believe that is what brought about the development of the 1649.

By Mr. Davis:

Q Can you tell me what you said to anyone, or what anyone said to you that you can recall, in connection with this matter?

A Are you speaking of at this time?

Q I will break it up into two questions. First I [15989] would like to know what was taking place at that time, namely, April to June 1962, or the year 1962.

A 1952.

Q 1952.

A I can't place the time of the conversations. Maybe in reviewing the diaries it will come about. I did have some discussions with Mr. Hughes on the question of DC-7s speed versus 1649s. I felt we should get the 1649s. Mr. Hughes was concerned, and it was his belief that the DC-7s would be faster than the 1649s that were then being built by Lockheed.

I took the position that if it was a speed advantage it would be so slight that it would not affect the scheduling. I had confidence in Lockheed, and I didn't believe that at

this stage, with the last of the piston aircraft, that we should go DC-7s.

As it turned out, the 1649 was a disappointment as far as speed was concerned.

Q Mr. Rummel explained that. Is that the only discussion of which you are aware with Mr. Hughes relating to the equipment program of TWA at or about that time?

A Those are the only discussions that I recall—when you mentioned DC-7 and the speed.

Q In connection with this aircraft requirement fore-[15990] cast that you prepared on May 5, 1952, as reflected by Defendants' Exhibits 172 and 257, do those reflect the independent views and judgments of yourself and your department at the time?

A They do.

Q Did you have any discussions with either Mr. Hughes or the Hughes Tool Company, or Mr. Dietrich, or anyone you associated as a representative of the Hughes Tool Company, as to how it was to be prepared, or its contents, or anything of the like?

A No, I did not.

* * *

[16015] Q I would like you to describe a little more fully, both what people told you, and what personal knowledge you had as to the amount of time and effort that Mr. Hughes was spending on this equipment problem?

A I previously testified to discussions with Mr. Hughes on the relative speed of the DC-7 and the 1649.

Q Anything else?

A I mentioned that I had discussions with him on the question of berths. His interest in the airplanes was certainly well know.

Q Have you finished?

A Yes.

Q Now as to what anybody told you.

A I was aware of the activities carried on by Bob Rummel and Mr. Hughes in connection with discussions of airplanes.

Q Does that fully identify and describe what you were told?

[16016] A I believe it does.

* * *

[16059] Q Do you have Exhibit 268 before you, Mr. Cocke?

A I have.

Q Would you read it very carefully, please? Have you finished reading it?

A I have.

Q Mr. Bradley was a director of TWA in 1953, was he not.

A He was.

Q And so was Mr. Dietrich?

[16060] A Yes, I believe so.

[16061] Q You see Mr. Dietrich is replying to Mr. Bradley and states on two separate and distinct occasions Howard Hughes endeavored to divert Mr. Damon from the Lockheed to the Douglas airplane, and then the next paragraph states that the first occasion was prior to the time "we placed the order for ten 1049s. The order was placed in 1950, and I think the conversations took place early in that year."

It continues to say:

"I remember particularly several conversations between Howard . . ." referring to Mr. Hughes ". . . and Ralph . . ." referring to Mr. Damon ". . . and myself . . ." referring to Mr. Dietrich ". . . in which Howard argued for the Douglas planes—and I finally supported Ralph on the Constellation program primarily because we already had a fleet of Constellations."

That refers to the ten 1049As which are reflected on Defendants' Exhibit 163, as having been contracted for in December 1950. Do you agree with that?

A Yes.

Q Do you recall anyone at TWA saying that Mr. Hughes at that time was favoring Douglas equipment over Lockheed equipment?

A I think I have testified previously that Mr. Hughes favored the Douglas equipment over Constellations. I don't [16062] know whether I specifically identified the time, but I was familiar with that fact.

Q Do you recall what top management at TWA said in that regard, either at Board meetings or out of Board meetings?

A I think I have already testified as to my reasons for favoring Constellations over Douglas.

Q Did anyone at the Board meeting in effect say, "Mr. Hughes may prefer Douglas, but we think we ought to have Constellations, so we will go ahead and order Constellations"?

A I don't recall any comments like that.

Q Have you given me now your total recollection of what was taking place, or what consideration was given to Douglas Aircraft over Constellations?

A I don't think I can add anything.

Q Will you look at the next paragraph in which Mr. Dietrich says to Mr. Bradley:

> "The second instance occurred prior to our placing the order for the twenty Connies, which will be delivered this year . . ." referring to 1955.

Then he continues:

> "As I recall, the order was placed in the fall of 1953, and these conversations occurred prior to [16063] the placing of the order. At that time

> Howard argued that the Douglas airplane was superior. He pointed out to Ralph that he was in a position to secure preferred delivery of DC-7 equipment which would have put us in possession of such airplanes prior to the delivery of the Constellations which are being delivered this year. I have my notes which were made at the time of these last conversations, and I am sure that Ralph will recall that both Howard and I discussed the matter with him."

Do you have any knowledge or information of any kind of the occurrence described by Mr. Dietrich to Mr. Bradley?

A Not beyond what I have testified to.

Q Were you aware at the time that Mr. Hughes felt that he could get good delivery positions from Douglas for the DC-7?

A I don't recall it, no.

Q Can you identify or describe discussions within the management or personnel of TWA with respect to this matter of the Douglas equipment versus the Lockheed equipment?

A I don't recall anything beyond what I have said.

Q There was a time, was there not, when some concern was expressed at the possible speed advantage that a DC-7 might have over the Constellation. You remember that, [16064] don't you?

A Yes.

Q Do you recall in that connection any discussion among the top management people of TWA, as to the availability of DC-7s?

A There were discussions of the DC-7. I think I testified before that I had some discussions with Mr. Hughes on the question of speed differential between the DC-7 and the 1649.

I wasn't aware that the DC-7 was involved in the consideration of the original Constellation orders of the 1049s and the 1049Gs.

Q Can you identify or describe more fully the reasons advanced by the management of TWA for pursuing the acquisition of Lockheed Constellations over the Douglas equipment?

A I can't add anything to what I have already said.

Q Were you aware of these meetings between Mr. Hughes and Mr. Damon and Mr. Dietrich, relating to that subject?

A I don't recall them. I don't recall exactly how it came to my attention that Mr. Hughes was in favor of the Douglas. It could have been in discussions with Mr. Damon, with Mr. Collings.

Q I recall Mr. Rummel having testified at one point [16065] to the effect that he was favoring or inclined to favor the DC-7. Do you have any recollection of Mr. Rummel's position?

A I recall that he was in favor of the DC-7, as opposed to the 1649.

Q Can you tell me how the decision was made to proceed with the Lockheed aircraft any more fully than you have? Who made the decision?

A It was the management recommendation to the Board of Directors that the Board of Directors approved.

Q The next paragraph reads:

> "I don't think the final decision in the matter reflects on anyone involved. Frankly, I think that back in 1950 Ralph was inclined to the same view as Howard had, with respect to the comparative merits of the two airplanes, but it is my opinion that he was influenced by the economic need of standardization."

Do you have any recollection of Mr. Damon expressing himself on the economic need of standardization?

A That was one of the factors that was considered by Mr. Damon. The factors that affected or influenced my recommendation were more on the sales side than the operating and cost side.

[16066] Q Can you explain a little more fully what economic need of standardization was? What does that mean?

A I can't explain it any clearer than I think is outlined in this memorandum.

Q Does it have to do with the provisioning—

A Mr. Collings took the position that you would have additional training costs. The pilots would not be interchangeable between Douglas and Constellation airplanes. You would have to have separate crews, which would make it difficult to integrate the fleet. There would be additional spare parts.

Q Provisioning and maintenance and spare parts in many locations, was that an important factor?

A That's correct. Training of people to handle two different kinds of airplanes.

Q The next paragraph of this letter reads:

> "Incidentally, I have in my files a memo of a conversation with John Collings, which took place in the early part of 1953, which followed conversations between Howard and John with respect to the Douglas airplanes. John took the position that the ten Douglas planes on which preferred deliveries were offered to us would not be competitive in transcontinental traffic. He expressed an objection to mixing [16067] up Douglas and Lockheed planes in the fleet. He pointed out that the training program would cost an added $1 million minimum, and that an additional $1 million expense would be involved in the parts program. He referred to psychological disadvantages, but did point to the fact that the DC-7 would

have a substantial speed and elapsed time advantage transcontinentally over the new Connies."

Do you have any knowledge or information with respect to the views expressed by Mr. Collings?

A Not beyond what he has expressed here.

Q This fairly reflects the views that Mr. Collings did in fact express?

A Yes. I am not quite sure of the last sentence, whether he is referring to the DC-7 versus the 1649, or the 1049G.

Q Mr. Dietrich appears to be referring to a conversation with Mr. Collings, involving Mr. Hughes, in the early part of 1953. Were you at that time also giving some consideration to the development of what eventuated into the 1649s?

A No. I think that clarifies it. He was referring to—I assume he was referring to the G.

Q This refers to a preferred delivery position on ten [16068] Douglas planes. Does that refresh your recollection in any way?

A No, it does not. I am not sure just which ten Douglas airplanes he is referring to.

Q Apparently Mr. Collings was taking the position that those Douglas aircraft would not be competitive in transcontinental traffic. Is that something you gave some thought or consideration to?

A I don't understand his comment on that.

Q Do you have any recollection of having given consideration to the competitive advantages or disadvantages of the Constellation versus the Douglas type aircraft?

A I don't know what type of Douglas aircraft he is talking about in this ten.

Q This is a letter from Mr. Dietrich to Mr. Bradley, a fellow director. On its face it indicates it was a response to comments of Mr. Bradley. Can you tell me if in that

period Mr. Bradley expressed or made any comments that you are aware of as to the manner in which TWA management was making decisions with respect to aircraft equipment, disregarding the counsel or wishes of the majority stockholder?

Mr. Williams: Would you read that question, please?

[16069] Mr. Williams: I object to so much of the question as includes the comment "disregarding"—beginning with "disregarding." I object to the question in the form in which it is now.

I would not object to it if you leave off the qualfying clause at the end.

Mr. Davis: My question at this point is whether or not he is aware of any comments of Mr. Bradley to that effect. If he is not aware of any comments by Mr. Bradley to that effect, he may say so, and I will ask him if he is aware of any other comments made by Mr. Bradley.

Mr. Williams: I don't know that was Mr. Hughes' advice. We have a letter that may tend to indicate that. We can't assume it.

Mr. Davis: May I ask him, as I think I am entitled to ask him, whether or not Mr. Bradley complained to the management that Mr. Hughes' views were being disregarded.

Mr. Williams: I don't object to that.

The Special Master: You may answer that.

A I don't recall any such comments.

By Mr. Davis:

Q Do you recall any comments of Mr. Bradley as a [16070] director to anyone in the top management group,

relating to the manner in which TWA was pursuing its policies relative to acquisition of aircraft?

A I don't recall any comments made by Mr. Bradley.

Q Do you recall ever having a discussion with Mr. Bradley with respect to this subject matter?

A I am sure there were many discussions with Mr. Bradley in connection with the equipment discussions at the Board of Directors. I don't recall any strong position that he took, or any position that he took.

Q You don't recall any at all?

A No, I do not.

Q Do you recall any discussions within the management group of TWA relating to the extent to which, as a management group, there was a need to give weight to the views of Mr. Hughes with respect to the type of equipment to be acquired, quantity, or related matters?

A I don't recall any discussions along those lines, no.

Q Do you recall any discussion with Mr. Dietrich to the same effect I described to you, namely, that management of TWA should give weight or careful consideration to the views of Mr. Hughes with respect to the type of equipment?

[16071] A No, I don't recall any discussions.

Q Do you recall any discussions at any time with Mr. Collings, with reference to Mr. Collings' meetings with Mr. Hughes, relative to the type of equipment which TWA management was interested in?

A I don't recall any conversations regarding Mr. Collings' conversations with Mr. Hughes.

Q Or with Mr. Damon?

A No. I was aware that such conversations were going on. They must have been mentioned, but I don't recall any instances that I could quote as to the conversations, except I was aware that Mr. Hughes favored the Douglas aircraft.

Q And you were aware of that at the time TWA management decided to take Lockheed Constellations?

A I was.

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[Testimony—December 4, 1962]

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[16244] Q At Kansas City, on Friday, September 14th, you have a note "Meeting, re: Equipment." What was that about?

A I don't recall.

Q Do you recall a meeting in Kansas City at or about that time relating to the 880 Convair program?

[16245] A There was a meeting in Kansas City with Mr. Collings and a group, at which, as I recall, the discussion was as to the desirability of the Convair purchase based on various prices for the airplane. That may have been at this time. I don't recall. That was prior to the management recommendation that we purchase the Convairs.

Q Mr. Rummel testified with respect to a meeting at Kansas City at this time. I would like to have whatever recollection or knowledge of information you have as to what took place at that time.

A My only recollection is that it was a discussion on the question of the Convair 880, and I believe the part that depreciation would play in the operating cost of the airplane as one of the factors in comparing the 880 with additional Boeings.

I believe there were several prices discussed.

There was a question of descalation in the price depending on the number of aircraft that Convair sold. After the discussion I believe the group unanimously recommended the Convairs.

Mr. Davis: May I have marked at this time as Exhibit 316 a confidential memorandum from Mr.

Rummel to Mr. Collings, dated September 17, 1956, with copies to a number of named individuals, [16246] including Mr. Cocke and Mr. Leslie.

(Confidential memorandum from Mr. Rummel to Mr. Collings, dated September 17, 1956, marked Defendants' Exhibit 316 for identification, as of this date.)

By Mr. Davis:

Will you let me know after you have read Exhibit 316?

A I have.

Q Exhibit 316 indicates that a copy of this confidential communication from Mr. Rummel to Mr. Collings was received by you, Mr. Cocke. Do you have a recollection of having received a copy of this?

A I am sure I received a copy. I don't remember specifically receiving it.

Q You see Mr. Rummel refers to a telephone conversation with Mr. Collings of September 14th, to which he has already testified, and in which Mr. Collings gave him the statement as to TWA's management position on the Convair 880 then known as the Golden Arrow project, which Mr. Rummel in turn gave to Mr. Hughes, as he puts it, "verbatim."

It is quoted there in this memorandum.

My first question to you is whether or not those items 1 to 4 which are listed there in fact reflect what was TWA's management position at the time?

[16247] A They do.

Q Then look at the last paragraph which states "Attached is a list of the pros and cons which were arrived at during your Friday afternoon meeting attended by Messrs. Cocke, Busch, Fellows, Fullerton, Rourke, Weller and myself in discussing the matter with Mr. Hughes I pointed out while Pan American was showing considerable interest in 30 Golden Arrows, there could be no positive assurance at this time that they would buy.

There is attached a list of pros and cons.

A Yes.

Q Do you have a recollection of that meeting taking place?

A Yes.

Q At that meeting there were pros and cons discussed?

A Yes, sir.

Q Will you look at the pros and cons that are attached to this exhibit, and tell me whether or not so far as you are concerned they fairly and accurately reflect the pros and cons that were discussed or advanced at this meeting?

A I believe they do.

Q Do you have any further recollection or knowledge or information of the number of jet aircraft to be acquired [16248] by TWA, or what was going on at TWA in connection with its jet equipment program?

A I don't believe so.

• • •

[16261] Q Will you continue with your diary? Where are you up to now?

A January 17th.

Q Is there anything there of any significance?

A It indicates I had discussions with Hal Graham of Resort Airlines, regarding aircraft. That was probably the first discussion I had with Hal Graham on the possibility of leasing 1049Hs from Resort Airlines.

Q Will you identify what that subject was?

A It was about this time the economy service, a lower class service than the existing tourist service in the international field was either approved or being considered. [16262] It was a question of trying to obtain aircraft that were suited for that type of service that was being considered.

Q I am interested in your contact with Mr. Graham of Resort Airlines, and how it came about, and what you

discussed. Is this a prelude to what eventuated into the acquisition of these 1049Hs?

A The lease of the 1049Hs.

Q That is what I am interested in. How did that originate, how did it come about?

A I am not sure whether I approached Hal Graham or Hal approached me. He was aware of the pending possibility of the economy service. I was aware of the possible need by TWA of aircraft to perform such service.

Q Then what happened?

A Eventually the Hughes Tool Company leased, I believe two aircraft from Resort. I may be mistaken in the number. I think there were five aircraft that were eventually leased. I think two came from Resort, and three came from Transcontinental.

[16263] Q I am interested more in the circumstances relating to the development of this thought or idea—the availability of those aircraft from Resort, and related matters. I understand from your testimony you are not quite clear whether you approached Mr. Graham or Mr. Graham approached you.

I gather that you had some discussion with him on or about January 17, 1957.

I would like to understand what transpired in these conversations you had with Resort Airlines.

A Just a preliminary discussion if they possibly had aircraft for lease, and would we be interested.

Q Did you report back to someone at TWA?

A I am sure I must have discussed it with Mr. Burgess.

* * *

[16788]

[Testimony—December 6, 1962]

* * *

Q Do you recall the matter referred to in Exhibit 320 being called to your attention or the management of TWA?

A. I don't recall this memorandum. There were discussions that I was familiar with in connection with the 1049Hs, with Lockheed, and I think I testified about Resort.

Q Mr. Weller is sending this confidential memorandum to Mr. Burgess and you and others, on March 27th, and referring to information that he obtained from Mr. Schwartz and Nelson of Lockheed at or about that date, and which outlines certain terms on which TWA could obtain some 1049Hs. It relates to possible methods of financing. It relates to the guarantee of the Hughes Tool Company to be obtained, and it ends up with a statement from Mr. Weller, or by Mr. [16789] Weller to the effect that negotiations of these terms would be a matter for Mr. Leslie, TWA counsel, and perhaps Hughes Tool Company, and that he was expressing no opinion as to TWA's possible interest in this sort of a proposal.

What I am trying to find out, Mr. Cocke, is what took place when Mr. Weller called the attention of top management of TWA to the information he had received or obtained from Lockheed.

A I don't recall.

Q I am not asking you to remember this memorandum particularly, but having read this memorandum, and with your diary before you, I am trying to understand what was taking place.

A I think I have testified before, Mr. Davis, that at about this time it appeared that the economy service was going to be approved on the Atlantic most any time. I believe the economy service finally started in the spring of 1958, so that all during the year of 1957 we were considering what equipment action would be called for in case the economy service was approved by the International Transport Association Rate Conference.

Q What I am interested in primarily now is what communications of any kind took place between anyone at

TWA, and either Mr. Hughes or the Hughes Tool Company, or with [16790] the Equitable or the banks, relative to financing, and what the management of TWA did in the light of what you have described?

A There were many, many discussions and meetings considering this problem.

Q Discussions and meetings among whom?

A Among TWA's management. Some place along in a period beyond this I had a number of discussions with Mr. Hughes, numbers of discussions with Hal Graham, representatives of Transcontinental, Leonard Schwarts, Lockheed, on this question of what should TWA's action be to obtain or convert existing equipment to configurations that would comply with the conditions on the economy service, which was to be a new type of service.

Q That is exactly what I want you to identify and describe as fully as you can, giving us not only your total recollection, but also whatever knowledge or information you may have acquired up to today on this subject.

First may I ask you to describe the subject matter of what you said and what he said in these discussions with Mr. Hughes.

A I don't think I can add any more to what I have said. The aircraft to meet the conditions of what it appeared the economy conditions would finally wind up to [16791] be had certain requirements. I don't recall conversations at the meetings, except to say to you generally just what I have said. We were trying to determine the best course of action for TWA to take to be able to participate in economy service on the Atlantic when and if it was approved by the Rate Conference.

Q I am trying to understand what it is that you were trying to decide. What alternative action was considered and how did you arrive at the decision to do whatever you did? Can you describe that?

A The original concept of the economy service was an extremely austere type of service. There would be no food served. There would be extremely high density seating. There would be no lounges. There would be no gallies [sic] on the airplanes.

We had the problem of determining whether or not to in effect strip some 1649s of their present configuration, the interior, and equip them with the economy seats, or we had the option of looking for 1049H aircraft that were in existence, and that had been equipped with an interior configuration that met pretty close what it looked like the economy service was going to wind up with.

These aircraft were aircraft that were convertible between cargo and passengers. They had light seats on the [16792] question of weight, and were being used in a nonschedule charter operations or for military contracts.

Q And that is the nature of the discussions that you were having with Mr. Hughes?

A Yes. I was indicating to Mr. Hughes the fact that it was necessary for TWA to have some type of an airplane with which to enter into the economy service. Whether that was at this time or later, perhaps notes in my diary might indicate that.

* * *

[16801] Q Now, Mr. Cocke, have you had an opportunity to review what has been marked as Exhibit 321, 322 and 167?

A I have.

Q With respect to Exhibit 321, will you give me whatever recollection, knowledge or information you have with respect to the circumstances relating to its preparation, and the recommendations which are reflected therein.

A I think this document reflects the problems that were

facing TWA, that I stated in my deposition prior to the recess.

Q Am I correct then that you have no knowledge or information of any kind with respect to the matters covered by Exhibit 321, other than what appears in Exhibit 321?

[16802] A And what I have testified to previously.

Q Does that refresh your recollection in any way with respect to the nature or scope of communications you may have had with Mr. Hughes?

A I believe it does.

Mr. Williams: Off the record.

(Discussion off the record.)

By Mr. Davis:

Q This memorandum indicates a recommendation that TWA acquired by purchase or lease ten Lockheed 1049-Hs for use in this "austerity" service.

A And other uses which are outlined in the memorandum.

Q Can you give me the nature of what was said at conferences or meetings of TWA management, views expressed by Mr. Burgess, Mr. Pierson, Mr. Rummel, or Mr. Leslie, or Mr. Hughes, if you have any recollection of any conversation or communication with Mr. Hughes with respect to this.

A I certainly concurred with this recommendation.

Q I understand that. Do you have any recollection or knowledge or information, however, with respect to the others?

A I don't recall whether everyone concurred in it or not. I believe they did.

Q Can you explain the reason why it was recommended [16803] that either there be purchased or leased? Can you

explain why the consideration to a lease rather than a purchase? Can you identify the reasons why it was approached from that point of view?

A My recollection is that the reason the lease was considered was that—at least I felt if the airplanes could be leased on a relatively short term basis, under changing conditions in the industry, and in the rate levels, if we got a good lease it probably would be better to lease than to commit for the airplanes.

Q Was that by reason of the uncertainty of the success of this austerity service that was contemplated?

A The whole picture. Nothing was certain. I felt that the austerity economy service would be a success as it was contemplated.

Q At that point, as I understand it you had had discussions with Resort Airlines, is that right, relating to the availability of planes?

A Yes, about this time.

Q Can you identify or describe the nature of those conversations? In other words, what was Resort offering—to lease, or sell, or either, or both?

A I don't recall whether they were interested in selling airplanes or not. My discussions were purely on a [16804] relatively short term lease basis.

Q Look at the top of page 2. It says "Before such a lease could be consummated approval would be required both from our board of directors and from the Equitable Life Assurance Society."

Do you know whether or not an effort was made to obtain a consent from the Equitable?

A I don't recall.

Q The next sentence "Pursuant to our discussion on Saturday, active negotiations with Lockheed and with possible lessors will be commenced immediately."

Do you know what that referred to?

A Probably it refers to the discussions with Resort and Transcontinental. I might for purposes of clarification at this time state that the lease was not with Transcontinental, but with Cal-Eastern Corporation, who controlled an airline called Transcontinental. I notice that from notes in my diary.

Q A proposal which is attached to Exhibit 321, page 7, refers to a study as to the possibility of remodeling presently owned aircraft in order to make such aircraft suitable for this austerity service. You recall that consideration was given to that possibility?

A I think I so stated in my previous testimony, [16805] that we had the alternate choice.

Q Am I correct in understanding that management of TWA concluded that such remodeling for one reason or another would not be desirable or economic?

A That's correct.

Q Can you tell us whether or not that was basically for the reasons set forth in Exhibit 321?

A Yes.

Q You see there is a heading entitled "Acquisition of Other Aircraft," and states that consideration had been given to the acquisition by purchase or lease of other types of aircraft.

The two which appear most attractive economically for the service are the Bristol Brittania and the Lockheed Super Constellation, Model 1049-H.

Then it goes on to discuss the two aircraft and other matters.

Will you give me your total recollection of whatever knowledge or information you have with respect to the consideration given to other possibilities for acquiring aircraft suitable for the service mentioned?

A Only that we had reviewed all possibilities to arrive at the best recommendation for TWA.

Q With particular reference to the Brittania, can you [16806] tell us any more than you have as to the reasons.

A I wouldn't recall the reasons, except as pointed out in this memorandum.

Q You see the portion of this Exhibit 321 under the heading "Conclusions"—can you tell me whether or not in fact those were the conclusions reached by TWA operating management personnel?

A I believe they do, yes.

Q While we are on that subject, will you look at Exhibit 322. Refer first to Exhibit 167, Mr. Cocke, which are the minutes of an Executive Committee meeting of April 17, 1958. Do you have that before you?

A I have.

Q It notes that present by invitation were yourself as senior vice-president-sales, Mr. Leslie, Mr. Duckworth and Mr. Spater, counsel.

Do you recall attending that particular Executive Committee meeting?

A I don't recall it, no.

Q Can you tell me why you were invited to attend this meeting of the Executive Committee?

A Only because being vice-president-sales, I was one of the senior executives who was pressing for a solution to our equipment problems in connection with the austerity [16807] service.

Q Have you read these minutes?

A Yes, I have.

Q Do they correctly reflect the facts so far as you are concerned?

A I believe they do, yes.

Q Will you look at what has been marked as Exhibit 322. Have you read what is set forth there?

A I haven't read it word for word. I have looked it over, yes.

Q Based upon whatever participation you had in connection with this 1049-H program, do you have any knowledge or information contrary to what is described there?

A No, I do not.

Q Now you have been oriented as to what in fact took place. Does that refresh your recollection in any way with respect to the nature or scope of any communications that you had with Mr. Hughes, or any other representative of the Hughes Tool Company relative to this?

A Nothing beyond what I have previously testified to.

Q Now let us continue with your diary, having in mind what did in fact take place. See if there is any entry or notation which you made in there which refreshes [16808] your recollection in any way whatever. This meeting on June 5th with Mr. Austin, Capitol Airlines, was that a purely social occasion, or did it involve anything else?

A It may or may not have. At about this time Mr. Austin and I had some discussions in connection with the possibility of us acquiring Viscounts, and the scheduling of the Viscounts of Capitol and TWA in the New York-Chicago market, so that between the two companies we could have a fairly rounded pattern of service. But as we did not acquire the Viscounts, nothing came of it.

Q I see a note that Mr. Burgess was taken ill on Thursday, June 6th. Was that a prolonged illness?

A He was away for about a week, I believe.

Q On June 14th you referred to a board meeting, personnel change. What does that refer to?

A I don't recall what the personnel change was.

Q On June 20th you referred to 1649 prop trouble. I have a recollection of Mr. Rummel having testified that Mr. Hughes had some concern with respect to the propeller pitch. Can you identify what this entry refers to?

A My recollection is the 1649s were originally equipped with a hollow propeller, that is, a propeller made in two pieces.

I believe about this time in Paris there was a [16809] mechanical failure on the part of one of the blades. We then changed to a different type of propeller blade on the 1649s.

Q What is this entry on June 25th "Meeting, 1049-G, Burgess, et cetera." What does that refer to?

A I don't recall.

Q This entry on July 2nd refers to a meeting re: Coverdale & Culpitts' report, and 1049-H, and sales aircraft.

What does that refer to?

A I believe the Coverdale & Culpitts report was an industrial engineering study they were making in connection with the salary structure of the company.

The 1049-H and sale of aircraft was just more discussion in connection with the 1049-Hs.

Q In 1957, you may recall there was some additional financing action by TWA, involving the issuance of additional shares of stock, and bank loans.

Do you have any recollection of any kind with respect to financing arrangements of TWA which took place in 1957?

A No, I do not.

Q Do you have any knowledge or information with respect to the circumstances relating to the issuance of additional shares of common stock of TWA by its prospectus [16810] of June 17, 1957?

A No, I do not.

Q What does sales of aircraft refer to, in that entry of July 2nd?

A I don't recall what that refers to.

Q Will you continue with your diary then. Do you see the entry on June 3rd. two phone calls—

A July 3rd.

Q Hal Graham-Resort, Spater, schedule meeting.

A I don't recall the phone calls. The entry would indicate that we were discussing the 1049-H, and I was talking to Hal Graham of Resort. I think I testified previously that Mr. Graham was also dealing with the Hughes office on the West Coast.

Q Did this austerity service in fact go into effect?

A It did, but not in the exact manner in which we had hoped it would.

Q Was it subject to CAB authorization or approval before it could be put into effect?

A First it had to be approved by the International Transport Association Rate Conference, and then subject to the approval of all the governments involved.

Q Will you tell us what took place relative to this so-called austerity service.

[16811] A The original concept of the austerity service was, as I believe I have stated before, no gallies [sic] no meals, high density seating.

I believe it was in the spring of 1958 when final agreement was reached. We tried to reach agreement in the fall of 1957, but were unable to do so.

One of the stumbling blocks was the desire of Pan American and TWA that the austerity service be limited to an all one class austere airplane.

The foreign flight carriers, because of lack of equipment, were holding out.

Q Who was holding out?

A The foreign flag carriers generally were holding out for a provision which would enable them to offer this type of service on a mixed class airplane.

We were opposed to that, because immediately you offered it on the mixed class airplane, you would not gain the economies that you could on an all economy aircraft, because you have got the galley on a mixed class airplane to serve the first class or tourist passengers.

My recollection is that finally to obtain an agreement, which must be unanimous agreement of all carriers, we accepted a compromise of the offering of this service on a mixed class airplane, that is, part economy [16812] service, part tourist service, part first class service.

The competitive aspects of economy service on a mixed class airplane was more desirable than one airplane that had 100 some odd economy passengers.

It also opened the door, as time went on, for the erosion of the austerity provisions, because as long as you had a galley on the airplane, and the galley was large enough to take care of furnishing food for economy passengers, over a few years we drifted into an upgrading of economy to where it was just as good as the tourist service was.

Q Do you recall the circumstances relating to CAB action on this program?

A They approved it as it was agreed to.

Q Will you return to your diary?

A You will note on July 9th I was in Kansas City and inspected the 1049H aircraft.

I believe that was the first airplane that we leased from Resort. There is a reference on July 29th to a flight that was made by TWA executives in a Brittania in Montreal.

* * *

[16817] Mr. Davis: May I have marked for identification at this point as Exhibit 323 the minutes of the Board of Directors of TWA which was held on December 5, 1957.

(Minutes of Board of Directors of TWA held on December 5, 1957, marked Defendants' Exhibit 323 for identification as of this date)

By Mr. Davis:

Q Will you look over the minutes of that meeting, Mr. [16818] Cocke, with particular reference to what appears under the heading "Report of Mr. John A. Collings," and what appears under the heading of "Ratification of purchase of one 1649A aircraft and spare parts," and "Equipment Program."

Have you finished reviewing the minutes of that meeting?

A I have.

Q That indicates you were present at that meeting?

A Yes.

Q Do those minutes fairly and accurately reflect what took place at that time so far as you are concerned?

A I believe so.

Q First look at what appears under the heading "Report of Mr. Collings."

My first question is, did Mr. Collings stay on the Board of TWA after he resigned as an officer? Is that what happened, or did he come back to TWA?

A He remained on the Board after he resigned as an officer and was employed as a consultant.

Q Can you identify or describe what is referred to under the heading "Report of Mr. John A. Collings", referring to the sale of eleven 202A Martin aircraft? What happened with respect to those aircraft?

Mr. Zeller: Are you asking him what was said [16819] at the meeting?

Mr. Davis: No, I am asking him for all knowledge or information which he has relative to efforts to dispose of the 202 aircraft, and what took place, as well as what happened at the meeting.

A Mr. Collings was engaged in the sale of aircraft that TWA felt were no longer needed.

I don't recall who these negotiations were with, or anything about it, except that I know Mr. Collings was active in attempting to sell aircraft that were excess to TWA at the time.

Q Do you know what in fact took place, who they were sold to, if they were sold at all?

A They have all been sold—sold and leased. I don't recall who all the purchasers were. Alleghany Airline bought some.

Q Who was in charge of that project of the disposal of these planes?

A It was one of the functions that Mr. Collings carried out.

Q And that is all the knowledge or information you have on that subject?

A Yes.

Q Do you know whether or not there were any communi- [16820] cations of any kind with Mr. Hughes or any other representative of the Hughes Tool Company in connection with the disposition of the airplanes?

A I don't know of any.

Q Now will you look at the minutes which appear under the heading, or relating to the acquisition of additional 1649A aircraft?

Will you give me all the knowledge and information you have with respect to that matter?

A LAI, an Italian airline which was assisted in its organization and commencement of service following the war, by TWA, had ordered four 1649As.

At about this time they were being consolidated with Alitalia, another Italian airline, so that there would be one international Italian airline.

Alitalia had gone the Douglas route, and they were anxious to or were prepared to release their commitment for the four 1649As.

TWA took over, I believe from Lockheed, the commitment of LAI for these four aircraft.

Q Was that something that had been the subject of action by the Executive Committee of the Board of TWA?

A I am sure it had been discussed, because we recommended the acquisition of the aircraft.

[16821] Q What knowledge or information do you have relating to that portion of the minutes which state:

> "Subject to consummation of financing arrangements satisfactory to a committee of Messrs. Burgess, Leslie and Sessel . . ."

A Only what it says?

Q Do you have any knowledge or information as to what financing arrangements were made or discussed or developed in that connection?

A I don't recall how they were finally financed.

Q Do you have any knowledge or information of any communication of any kind with Mr. Hughes or any other representative of the Hughes Tool Company with respect to either the acquisition of those aircraft or the financing of those aircraft?

A At one time I had a discussion with Mr. Hughes, I believe it was when we renewed the lease on the Hs, and I believe it was prior to the finalization of the four LAI airplanes—whether or not these aircraft could be used as alternates for the Hs.

I didn't feel they could and so expressed myself to Mr. Hughes.

Q Do you have any recollection of what he said at that time?

[16822] A After discussion he agreed that they weren't interchangeable airplanes with the Hs or the 1649s, and we had to know which we would get.

Q Is that the sum total of your knowledge and information on that subject?

A That is all I can recall, yes.

* * *

[16873] Q You see, Mr. Cocke, that Mr. Rourke following what is reflected by Exhibit 179-AA, relating to the meeting of the jet planning staff of July 30th, refers to a study made as to the alternative courses of action available to TWA "To counter American Airline's Convair 880 competition," and he sets forth four alternatives, the first one being to order a limited number of Convair 600s. 600s later [16874] became known as the 990s.

A I believe that is true, yes.

Q The first alternative suggestion is to order a limited number of Convair 600s in addition to the thirty 880s, to provide competition in those markets which are sensitive to speed and where TWA meets American Airlines.

The second alternative he refers to is to "Increase the speed potential of the Boeing 120 or 130 to provide equal or superior speed to the Convair 600."

The third alternative he suggests is to reduce the order for Convair 880s and substitute a number of Convair 600s, maintaining a total of 30 Convair aircraft.

The fourth alternative he suggests is to increase the speed of the Convair 880, by installing anti-shock bodies and make other structural modifications.

Then he proceeds to describe the technical aspects of accomplishing alternatives 2 and 4.

You see at the bottom of page 1 he states if alternative 1, that is, the one of adding 990s to the thirty 880s, he says "If alternative 1 cannot be financed then the possibility of alternative No. 3 should be explored."

"It is estimated that a minimum of 10 to 15 Convair 600s would be needed to compete with American in those [16875] markets where TWA and American compete. This would involve changing the last 15 Convair 880s to 15 Convair 600s, and would cause a delay in delivery. Delivery of the 600s is controlled by engine deliveries. It is probable we could not receive the Convair 600 until May to September of 1961."

Then you see at the bottom of page 2 he says "It is proposed that Convair construct the last 10 to 15 Convair 880s to the 600 configuration except for engines."

What I am interested in, Mr. Cocke, is your total recollection of what was taking place at that time at these Jet Planning Committee meetings attended by Mr. Thomas and others.

A The review of all of this material, and the possibilities of what action TWA should take.

[16876] Q I understand that, but I would like to know what discussion took place relative to these suggestions, recommendations, alternatives that were being presented by Mr. Rourke?

A I don't recall the discussions.

Q Do you recall what views Mr. Thomas expressed as to the desirability of cutting back on the 880 program so as to take advantage of what appeared at the time, at least, as a possibility of improved aircraft?

A At some later period I recall that he felt that we should cut back the Convair order from thirty to twenty.

Q Now I am interested in what was being said with respect to the desirability of ordering, or having the Hughes Tool Company order some 990s?

A I don't recall any discussions on that. Mr. Thomas at a later date, I believe, discussed the cutback of the 880s from thirty to twenty. I did not agree with him.

After discussions with him he pointed out that by reducing the order from thirty to twenty, that our financing problems would be eased, that it would leave room for

later financing for more advanced models of the aircraft that were being considered.

[16877] I think I finally agreed that in view of those factors maybe we should cut back from thirty to twenty.

Q It is a fact, is it not, that there came a point when the Hughes Tool Company did place an order with Convair for some thirteen 990s?

A Yes, I am aware of that.

Q Do you recall the discussion which took place at these meetings of the Jet Planning Committee with respect to the suggestion made by Mr. Rourke, that in order to maintain TWA in a competitive position with American, it might be desirable to plan for ten to fifteen 990s in lieu of a similar number of 880s?

A I don't recall the discussions. Certainly these alternatives were discussed with the Jet Planning Committee.

I have no recollection of what went on in the discussions beyond what I have testified to and I don't know what these minutes reflect.

Q Mr. Tillinghast testified at some point that he or someone at TWA inquired into the circumstances relating to the order placed by the Hughes Tool Company for 990s, which took place some time in 1961.

Do you recall in that connection the suggestion being made by Mr. McCone as a director? Do you recall that taking place?

[16878] A I recall a telegram that was sent by Mr. McCone which I believe in effect said that we ought to review the background of this. I just recall the telegram.

Q In connection with this review of the background of the circumstances relating to the orders placed for the 990s, can you tell us what consideration, if any, was given to what has now been marked as Exhibit 327?

A I don't know.

Q Is there anything else that you can tell us? Do you have any other knowledge or information relative to this matter of the number of 880s or 990s that were to be ordered for TWA?

A I don't believe beyond what I have testified.

Q Can you tell us any more than you already have with respect to what in fact was done to further develop these studies as to the alternatives identified by Mr. Rourke in this confidential memorandum to Mr. Rummel—Exhibit 327?

A There were discussions as to whether we ought to consider re-equipping some of the 131s with fan engines. I recall that. I recall it was decided not to do that.

Q Do you recall why?

A I was opposed to it because I felt it would take airplanes out of service that we needed to use for a long modification program, and we just couldn't afford to take [16879] that many airplanes out of service.

Q Do you have any other recollection relating to these various alternatives that Mr. Rourke recommended for consideration?

A I think there was some work done on trying to increase the speeds on the 131s. I don't remember what technically was done, if anything.

Q Do you have any knowledge or information as to communication with Mr. Hughes or any representative of the Hughes Tool Company relative to the subject matter covered by Exhibit 327?

A I don't know of any.

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[Testimony—December 7, 1962]

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[16925] Mr. Davis: May I at this point have marked for identification as Exhibit 329 the minutes of the board of directors held on June 26, 1959?

(Minutes of the board of directors [16926] held on June 26, 1959, marked Defendants' Exhibit 329 for identification, as of this date.)

Mr. Davis: At this point, Mr. Special Master, I would like to point out that a page 6 of those minutes is missing, probably through an inadvertence. May I request TWA to furnish me with the missing page?

The Special Master: You may.

Mr. Williams: We will be glad to.

By Mr. Davis:

Q These minutes reflect you were present at that meeting.

A Yes.

Q I would like you to look over those minutes and tell me whether or not they fairly and accurately reflect what took place at that meeting so far as you are concerned.

A Yes.

Q I see under the report of the senior vice-president-system general manager, that is you, that you presented a report on current operating performance and described in detail the operating problems encountered with the Boeing 707 jet aircraft.

What does that refer to?

A I don't recall.

Q You can't identify the nature of those problems?

[16927] A Only normal problems in connection with any new airplane, so far as I recall.

Q I see Mr. Thomas made a report with respect to the operations of the corporation, compared it with the loss of over $12 million at the same date in 1958, and then he referred to the fact that the international division was currently operating at a substantial loss.

Can you amplify what appears in these minutes with respect to what was taking place at that time with respect to the operations of the international division?

A I don't recall whether Pan American had their Boeings in operation internationally by this time or not. I believe they did, and that would affect our traffic internationally.

Q Anything else that you can recall?

A No.

[16928] Q Will you look at the minutes which appear under the heading "Authority to lease three additional Boeing Model 707-131 aircraft from Hughes Tool Company," which refers to the authority to lease additional 131s so as to bring the total up to fifteen, which could be leased from the Hughes Tool Company on a day-to-day basis?

Do those minutes in any way refresh your recollection as to the circumstances relating to this day-to-day leasing arrangement, and the reasons therefor?

A I don't believe it does, no.

Q Will you look at the minutes which appear under the heading "Authority to lease Boeing Model 707 aircraft to Northeast Airlines, Inc."

Do those minutes fairly reflect the facts as they then existed?

A I believe they do, yes.

Q Now look at the minutes which appear under the heading "Consent to sale of six Model Boeing 707 aircraft by Hughes Tool Company."

Do you see where it says:

> "The president referred to the eighteen Boeing Model 707-331 aircraft on order by Hughes Tool Company under contracts assignable to the corporation?"

[16929] A Yes.

Q The line which reads:

"The president stated that he had advised Hughes Tool Company that the corporation had no objection to and consented to such assignment."

A I see that.

Q Does those minutes accurately reflect what took place at that time?

A Yes.

Q Can you tell me what had occurred, what had developed in connection with these Boeing 331s?

A I recall Mr. Thomas saying that there was an opportunity to transfer six of the Boeing 331s which the Hughes Tool Company had on order, to Pan American. I was opposed to it.

Q You were opposed?

A I was opposed to it at the beginning of the discussions. I felt that TWA had a need for the airplanes. Mr. Thomas felt for the reasons I think I stated before, he may need financing ability to get later models of aircraft, and that the sale of these six would ease the financial problems that we had at the time of financing the Boeings.

After a great deal of discussion I agreed that [16930] in view of those factors perhaps the wise thing to do would be to sell the six Boeings.

Q Do you have any other knowledge or information or recollection of the circumstances which led up to this action by the Board?

A Only that this action released funds to take up additional Boeings for TWA.

Q Was TWA paying for these airplanes as they were being delivered?

A No. They were leasing airplanes.

Q And were not paying even the rental on them?

A That's right.

Q I don't follow your testimony then.

A Perhaps I don't separate TWA and the Hughes Tool Company in my mind.

It was a question of the Tool Company picking up the Boeings from the Boeing Aircraft Company for TWA.

Q Do you recall what views were expressed by any other senior or key executive of TWA?

A I think I was the last one to be sold.

Q You were the last one?

A Yes.

Q Can you tell me any more than you have about what was said by anyone?

[16931] A I don't recall anything more.

Q Let me refer you to what has already been marked as Defendants' Exhibit 155, which are handwritten notes of Mr. Thomas, and which read as follows:

> "The commitments of the HTC for jet aircraft at this time was for thirty-three Boeings 707s, and thirty Convair 880s. I had stated several times that I thought the airlines had overbought on jets, and recommended that the HTC cut back on some of these orders if they could."

Do you recall, or do you have any recollection at all, or do you have any knowledge or information of any kind with respect to the views expressed by Mr. Thomas, and recommendations made?

Mr. Williams: What period does that particular sentence refer to? Is it identified in the exhibit?

I am not clear in my mind, and I don't know if

the witness is either, as to what date Mr. Thomas was referring to in that sentence which you just read.

Mr. Davis: What date?

Mr. Williams: Yes.

Mr. Davis: The only thing we have is the fact [16932] that these are notes in Mr. Thomas' handwriting.

Mr. Williams: No date is given.

The Special Master: Mr. Davis, the first page, the fourth paragraph, may be some indication where he refers to the leasing activity.

Mr. Davis: You can read the entire document.

Mr. Williams: I think it would be well, Mr. Davis, because the sentence has been taken out of context, and I don't have the exhibit in front of me, and if there is a date there, that would be important.

Mr. Davis: It may be important so far as this memorandum is concerned, but so far as I am concerned I want this witness' total recollection of whatever knowledge or information he has as of any date.

Mr. Williams: So do we. We don't disagree with that.

By Mr. Davis:

Q Let me refer to what I think is helpful, Mr. Cocke. Look at the first page and you will see Mr. Thomas in his notes says:

"In January 1959 the first Boeing 707 trainer was ready for exceptions."

The Special Master: I think he means "acceptance." [16933]

Mr. Davis: I think he may also mean that was the time when the acquirer can take exception to whatever—it is a squawk opportunity.

Q (Continuing)

"Messrs. Rowe and Cook appeared before the CAB and requested their consent for the Hughes Tool Company to lease this plane to TWA on a daily basis, cancellable on 24 hours' notice by either side. The CAB was assured that in so doing a permanent financing plan was being worked upon and would be completed by June 30, 1959. The CAB approved this lease. At approximately this time . . ." I would assume he is referring to approximately June 1959 ". . . the First Boston Corporation had been employed by the HTC . . ." or maybe in January 1959—I don't know when the First Boston was employed.

Do you know, Mr. Cocke?

A No, I do not.

Q (Continuing)

"You had been employed by the Tool Company to work on such a permanent financing plan but after about two months refused to proceed further because Mr. Hughes would not negotiate with them [16934] personally."

Do you have any knowledge or information with respect to that?

A No, I do not.

Q (Continuing)

"Shortly thereafter Dillon, Read was engaged by the Tool Company to develop a permanent financing plan."

Then we have what I was referring you to before:

"The commitments of the Tool Company for jet aircraft at this time was for thirty-three Boeing 707s, and thirty Convair 880s."

Then Mr. Thomas continues by saying:

"I had stated several times that I thought the airlines had overbought on jets, and recommended that the Tool Company cut back on some of these orders if they could."

Now I am back to where I was before. What knowledge or information do you have? What recollection do you have of Mr. Thomas expressing views comparable to what I have just read to you?

A I recall Mr. Thomas expressing this view as part of the discussion in connection with the sale of the six Boeing Model 707 aircraft. That was one of the [16935] reasons he used in our discussions.

Q Then he continues by saying:

"This would make it possible to start jet operations with a good basic jet fleet, and then after a year or so, operating record and appraisal of the market, know what additional jet planes were needed of the type that best suited to keep TWA in the forefront of the industry."

What knowledge or information or recollection do you have of Mr. Thomas expressing views comparable to what I have just read to you?

A I think that about expresses what I stated a few moments ago in my deposition.

Q Does that refresh you in any way with respect to the report you made to the Board on June 26th, with re-

spect to the operational problems you were encountering with the jets?

A It does not.

Q Then you see the next paragraph which reads:

> "When Dillon, Read started to work on a permanent financing plan, Mr. Hughes sent word that twenty-five Boeing 707s, and twenty Convair 880s would be made available to TWA, and the financing should be predicated on that basis."

[16936] Do you have any recollection of being informed by anyone the number of jets to be made available to TWA would be twenty-five Boeing 707s, fifteen 131s, and ten 331s? Do you recall Mr. Damon in his memorandum of December 1956 referring to the need of ten large jet aircraft for the international division? You remember that, don't you?

A No. My recollection is that ten considered the use of some pistons in the international operations. I may be mistaken. I don't recall it.

Q I will get that exhibit for you again, Mr. Cocke, but at the moment I am trying to find out from you what knowledge or information you have of any kind with respect to being informed that the number of aircraft to be available to TWA were twenty-five Boeing 707s, and twenty Convair 880s, and that TWA, or the financing was to be predicated on that basis.

A I think I have stated before that there were discussions as to the numbers of Convairs—twenty-five, twenty. It is true that Mr. Thomas finally predicated his scheduling and preparation on the basis of the fifteen 131s. I am confused about the numbers.

Q Let me refer you to Defendants' Exhibit 309, Mr. Cocke, which is the memorandum of December 6, 1955 by Mr. Damon to the Board of Directors.

[16937] If you turn to page 6, where Mr. Damon is saying:

Cocke Deposition.

"Whether by 1960 the International Airline business will have developed to a point where for competitive or traffic reasons we must supply long range jet equipment beyond the gateway point I mentioned above, I do not know, but to provide truly competitive service and keep our place in the sun at the important gateway enumerated will require a minimum of ten additional long range jets."

A I see that.

Q "At a total expenditure which I would estimate at $60 million." Do you know to what extent Mr. Thomas reviewed Mr. Damon's plans and recommendations?

A I don't know that he did.

Q Certainly by 1958 the development of passenger traffic volume had not grown to the extent anticipated in 1955 or 1956? That is a fact, is it not?

Mr. Williams: Anticipated by whom?

Mr. Davis: By TWA, as reflected by their forecast.

A I don't recall whether it had or not.

Q Do you see the next sentence in Mr. Thomas' notes which reads:

[16938] "This reduction followed TWA management's recommendation and was perfectly acceptable."

What knowledge or information do you have with respect to TWA's management's recommendation for the reduction in number of jets to twenty-five Boeings and twenty Convair 880s?

A That was management's recommendation.

Q Can you tell me now when it occurred, and how it developed?

A I can't add anything more to what I have already said. Mr. Thomas felt that we should conserve whatever financing was available for newer types of jets.

I recall him stating that he thought the industry was overbought. After discussion management agreed that this was the numbers of aircraft that we should plan on at that time.

Q Do you have any knowledge or information whatever with respect to the plans proposed or developed by Dillon, Read during 1959?

A No, I do not.

Q Have you given me the sum total of your knowledge or information of any kind which you now have relating to the number of jet aircraft that TWA's management recommended as best suited to TWA's needs?

[16939] A I have.

• • • •

[16987] Q Do you mind going back to December 10th? I see a reference to a meeting of the Board, and then you refer to a Lockheed project. What was that about?

A I don't recall. Some time along in this period there were some discussions of Lockheed Electras. That may have been it. I don't recall.

Q Can you tell me the nature of those discussions?

A I recall Mr. Gross and Mr. Thomas discussing the question of TWA acquiring some Lockheed Electras. TWA's management was not in favor of the Lockheed Electras.

Q Mr. Thomas took that up at some management meeting, did he?

A I don't recall whether he did or not. I remember the matter was under consideration.

Q You do recall Mr. Thomas discussing that with Mr. Gross at some point?

A Yes.

[16988] Q But you can't tell us what the nature or extent of their conversations or meetings was?

A I cannot.

Q Will you continue with your diary? Where are you up to now?

A December 23rd.

Q How about December 16th? You have an entry of various meetings, and then, "Meeting Northeast Airlines, Stretch, Austin," and what is the next name?

A Probably Lane.

Q Burke, re: lease.

A Further discussions on the Northeast lease.

Q On the 17th you met with Mr. Thomas on the advertising budget?

A Yes.

Q And on Saturday, the 19th, you met with the Austins again. Was that purely social?

A Yes, as far as I recall.

Q During this period of time were you seeing the Austins fairly frequently on a social basis?

A Yes.

Q In connection with these social meetings was there any occasion that you can recall when business matters came up for discussion?

[16989] A I assume that at various times we talked business, yes.

Q Can you recall the nature of any of those discussions without trying to identify exactly when they took place?

A Nothing beyond the Northeast lease, the Northeast merger, interline traffic.

Q Do you recall discussing this Northeast merger during this period—1958, 1959?

A I may have.

Q Can you give me whatever recollection you do have as to what was being said either by you or Mr. Austin relative to a Northeast merger?

A We did discusss my opinion and his opinion of the desirability of a Northeast-TWA merger. Whether it was prior to the agreement or after the agreement, I would recall we probably touched on it prior to the agreement.

Q Can you tell me how the subject came up, and the substance of what was said?

A I think I had always or for some years felt that a Northeast-TWA merger would be a good thing, and perhaps would eventually come about.

Q What was the reason for that point of view on your part?

[16990] A I felt it would be an advantage to TWA to have a route to Florida. I was aware of the fact that the Atlas Corporation controlled Northeast. That Mr. Hughes was the largest principal stockholder of Atlas. That made me think it might happen.

Q When and how did you become aware of, or how were you informed that Mr. Hughes was the largest single stockholder of Atlas?

A I don't recall how I was informed of it. I probably read it.

Q You do not have any recollection of when or approximately when?

A No, I do not.

Q Would my suggesting that it was in connection with an RKO merger help you in any way?

A I believe that is how Mr. Hughes acquired his interest in Atlas, yes.

Q But you have no present recollection of approximately when that information came to your attention?

A No, I do not.

Q Can you describe a little more clearly what was in fact said between you and Mr. Austin relative to that?

A I can recall nothing more than I stated.

Q Do you recall what Mr. Austin said, in substance?

[16991] A I think he agreed with me.

• • •

[17003] Q Will you continue with your diary then. Do you see this reference on Monday, March 14th, finance problems, and lunch with Thomas.

A Yes.

Q March 16th, board of directors meeting, finance crisis.

A Yes.

Q Lunch at the Waldorf, Irving Trust.

A Yes.

Q And Thursday, March 17th, the board of directors still in session, finance crisis.

A Yes, I see those entries.

Q Can you tell me what was going on at that time?

A Trying to arrive at some agreement on financing.

Q Can you tell me any more than that?

A I don't believe I can.

[17004] Q Can you tell me what you were doing at the Irving Trust or at the Waldorf?

A I think a luncheon was given for the directors in the suite that the Irving Trust maintains at the Waldorf.

Q Was that by Mr. Sessel?

A Yes.

Q Can you tell me the nature of the crisis referred to in your diary?

A Only that the board and Mr. Thomas were working on the question of a finance plan to move ahead with the acquisition of the equipment that was on order.

I see on March 21st I have an entry that Mr. Hughes agreed to the Dillon, Read plan, and the board voted unanimously in favor of it.

Q Is it fair to assume that you don't have any knowledge or information with respect to the circumstances leading up to this so-called Dillon, Read plan?

A I just know that the Dillon, Read plan was being worked on, and was approved by the board.

Q Let me refer you to what has been previously marked as Defendants' Exhibit 168, Mr. Cocke, which is a memorandum from Mr. Rummel to Mr. Thomas, dated February 8, 1960, entitled "Convair 880 Integration Into TWA Service."

[17005] I particularly want to call your attention to what appears under the heading "Why Has The Convair 880 Program Been Delayed?"

A What page is that on?

Q It is the fourth page. Do you see where Mr. Rummel is saying to Mr. Thomas "The Convair 880 program has been delayed primarily because of:

"1. Vendor parts shortages.

"2. Correction developed and instated during Convair flight test program.

"3. Convair's decision to minimize overtime until certification is at hand."

Do you recall that report by Mr. Rummell to Mr. Thomas at or about that time?

A I don't recall it. I see I was given a copy of the memorandum, so I was no doubt aware of it.

* * *

[17006] Q At the time that you received a copy of this memorandum from Mr. Rummel, what did you do, Mr. Cocke?

[17007] Mr. Hupper: As I understand the testimony of the witness, he doesn't recall receiving it, so I object to the question on the ground that you haven't established that he did receive it.

The Special Master: I will overrule the objection. He said he must have received it.

A I assume what I did was to take this new estimated delivery information to rework into our schedule pattern.

[17008] By Mr. Davis:

Q Do you now have any knowledge or information of any kind, Mr. Cocke, which indicates that Mr. Rummel was wrong in the three reasons he gave?

Mr. Williams: I object to the form of the question.

The Special Master: Sustained.

By Mr. Davis:

Q Do you have any knowledge or information with respect to the extent to which the Convair 880 program was delayed by reason of vendor parts shortages?

A No, I do not.

Q Were you ever aware of the fact that Convair had vendor parts shortages?

A I recall we did, yes.

Q Do you have any knowledge or information with respect to the corrections which were developed and instated during the Convair flight test program?

A I recall there were corrections. I am not familiar with what the delays involved were.

Q But you were told that there were delays in connection with making corrections in the Convair 880?

A Yes.

Q Were you ever told that Convair made a decision [17009] to minimize overtime until certification is at hand?

A I don't recall that.

Q You don't have any knowledge or information about that whatever?

A I don't recall that.

Q Do you recall ever discussing with Mr. Rummel this memorandum, or the substance of what I have just referred you to—the reasons for the 880 airplane program being delayed?

A Not this memorandum. I certainly discussed with Mr. Rummel during this period the question of the delays to the Convair 880.

* * *

[17010] Q What is the significance of the entries which appear under date of March 28th?

A It appears that is a notation of a phone call that Mr. Thomas had from Mr. Cook, that the decision would be settled today as to whether we reduce to twenty 880s.

Q What does that mean?

A My recollection is there was a period of time where we were considering twenty or twenty-five, and it had something to do with having to advise the people working on the financing plan whether they should include twenty or twenty-five.

[17011] Q So that in fact the definitive decision as to whether it was to be twenty or twenty-five was not arrived at until approximately the end of March 1960?

Mr. Hupper: I object to the form of the question as calling for a conclusion—definitive decision.

The Special Master: Sustained.

By Mr. Davis:

Q Will you tell me when a decision was made as to whether the number was to be twenty or twenty-five?.

A Some time after this day.

Q What is this reference to "HH to sign Equitable letter tomorrow"?

A Just that I was told that by someone and entered it in my diary.

Q What is the meaning of the entries which appear on March 29th?

A Only an entry that I made that I was told that Equitable agreed to the financing, and that the next step was to take it before the banks.

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[17035]

[Testimony—December 17, 1962]

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Q Now will you continue with your diary? Where are you up to now?

A May 4th.

Q What is that entry "Preliminary decision on Florida route"?

A As I recall it, when we received the award of the Florida route—

Q When TWA did?

A When TWA received the award of the Miami-St. Louis-Chicago route, we operated through airplanes from Miami to St. Louis to the West Coast. National Airlines, I believe, and perhaps Eastern Airlines filed a complaint with the Board that the decision did not allow us to operate a through airplane, and the decision was made by [17036] the Board that it was necessary for us to break the flights at St. Louis, that is, operate Miami to St. Louis, and change airplanes, and originate a separate flight from

St. Louis to the West Coast because of the pendency of the Southern Transcontinental Route Case.

Q What is this preliminary decision on Florida? A decision by the Board, or was it a decision by TWA? Whose decision was it?

A I believe it was a preliminary decision by the Board.

Q Relating to TWA's St. Louis-Miami route, or did it relate to a preliminary decision in the Southern Transcontinental Case?

A My recollection is that maybe preliminary isn't the proper term, but it was the decision by the Board to continue to operate the Florida-St. Louis route. We would have to break the flight in St. Louis and not operate through airplanes from Florida to the West Coast via St. Louis.

Q At or about that time the CAB, the Examiner's decision, or some decision by the CAB on that subject came down on that date?

A That is my recollection, yes.

Q Then I see the next date, Thursday, May 5th, you [17037] had lunch with Mr. Crimmins. Mr. Crimmins at that time was counsel for TWA. Did he deal primarily with CAB matters for TWA at that time?

A Yes.

Q Then you have an entry "Florida route and Northeast Airlines interchange."

Can you tell me what that was about?

A That was probably a discussion with Mr. Crimmins in connection with the Florida route case, in which TWA was an applicant.

Q You are referring to some application by TWA for a Florida route other than the St. Louis-Miami matter?

A Yes. That was an application that TWA filed in connection with the New York-Florida route. We filed an application for the route.

Q Can you tell me a little bit more about that matter?

A I believe, as I recall it, our application was based on the request of TWA to be awarded the route if an additional carrier was to be certificated. That if Northeast was to be merged with any other carrier, that TWA was the logical carrier to merge with Northeast. I believe that was our position in the New York-Florida route case.

• • •

[17041] Q Sunday, May 8th. I see an entry "Meeting, 4:00 p.m.," and you name Mr. Odlum, Stretch, Austin, and you have the initials of Mr. Thomas, Mr. Leslie and yourself, and you mention Mr. Raymond Holliday and Mr. Raymond Cook.

Now tell me what that is all about.

A On the previous Friday, I believe, Mr. Thomas advised us that there had been discussions between the Atlas Corporation and the Hughes Tool Company with reference to a merger of Northeast Airlines and TWA, and that we were to have a meeting Sunday at Mr. Odlum's apartment to discuss it. This was the meeting on Sunday, May 8th, when the agreements that had been reached in the discussions between the Atlas Corporation and the Hughes [17042] Tool Company were gone over with the TWA group and Jim Austin, who was president of Northeast Airlines.

Q Give me now your total recollection of what took place at that meeting?

A It was a general discussion. I don't recall anything significant except Mr. Thomas took the position that this was brand new to him, in effect, and that TWA would have to review the merger terms that had been agreed upon between Atlas and the Hughes Tool Company for TWA to make its decision as to whether the terms that had been agreed upon would be satisfactory to TWA.

Q Was anything else discussed? Have you any other recollection of what took place at that meeting?

A No, I do not.

Q You recall that we were going to consider entries in your diary for the purpose of attempting to refresh your recollection of prior occasions when you may have had some conversations or knowledge of conversations with either Mr. Austin or others, relating to a possible TWA-Northeast merger. Has your recollection been refreshed in any way?

In other words, Mr. Cocke, I am trying to understand your testimony in the light of Mr. Austin's testimony before the CAB, and other evidence.

My question to you now is, can you now tell me [17043] what your total recollection is, whatever knowledge or information you now have with respect to the initiation of the discussions or conversations between anybody, or involving anybody, at Atlas, Northeast, the Hughes Tool Company, Mr. Hughes, or TWA, relating to the possibility of a merger of Northeast Airlines with TWA, the desirability or lack of desirability of such a merger?

A I don't believe I can add anything to what I have already testified. I stated that I had one conversation with Mr. Odlum, I think at or about the time the Eastern Colonial merger was being in the process of being heard or completed, which would have been 1955, 1956.

I am sure that Mr. Austin and I had off and on talked about a Northeast merger. I think I stated previously that one of the thoughts in my mind in connection with the lease of an aircraft to Northeast, that it would assist them in obtaining a permanent certificate. I think I stated that all before.

I don't think I have anything to add to that.

* * *

[17051] Q Let us return to your diary then. I see on May 9th, following this Sunday's meeting at Mr. Odlum's

apartment, you had a meeting with Mr. Thomas and Mr. Leslie regarding Northeast. Can you tell me what that was about?

A My recollection is that after the meeting on Sunday, we discussed the merger agreement as it was presented to us.

I expressed my opinion, that I was in favor of the merger.

I believe Mr. Leslie expressed the same opinion.

Mr. Thomas felt that we had had very little previous time to consider the terms; that TWA should [17052] analyze independently the merger agreement.

I believe Mr. Leslie in a group, which probably included Mr. Fellows, were asked to review the terms and come up with a recommendation following their study as to what action TWA should take.

Q Did you express reasons for your position in favor of such a merger at that time?

A Yes.

Q Can you identify the reasons that you advanced to support the opinion you were expressing to Mr. Thomas?

A I don't think I can add much more to the reasons than I believe I have testified to already. But the Northeast system, with its north-south routes, and the seasonality of our Atlantic operation would enable us to use equipment time that would be available when we cut back on the international routes in the wintertime. That that equipment could be used in the Florida market.

Q Do you recall or can you identify whatever reasons, if any, Mr. Lesle advanced in connection with the views he was expressing to Mr. Thomas at or about that time?

A I think, as I recall, his reasons were about the same as mine.

Q I understand from your testimony that Mr. Fellows was asked to make some studies or evaluations?

[17053] I think Mr. Fellows and some of Mr. Leslie's staff, I don't recall who—I believe others in TWA—reviewed the possible savings of the consolidation.

Q Can you identify and describe the nature of the report or evaluation that Mr. Fellows or others made at or about that time?

A I don't recall any details of the report. The report was favorable to the merger.

Q Was this reported to Mr. Thomas?

A Yes.

Q Do you have any other knowledge or information relating to any studies or evaluations that were made or views that were expressed by any other senior or key officers of TWA at or about that time?

A My recollection is that a committee of the Board was set up to review the merger proposal, and studies that had been made by TWA.

I don't recall who was on this committee, but this committee of the Board recommended the approval of the merger to TWA's Board of Directors.

Q You can't identify who the members of the Board that acted on that committee were?

A I believe I was on it. I believe Mr. Leslie was on it. I think Raymond Holliday. I am not sure just [17054] who was on the committee.

Q Will you continue with your diary? I see that on Tuesday, May 10th, there is an entry reading, "Discussions, Northeast Airlines."

A We had many meetings after the meeting of Sunday, May 8th, to discuss the studies that were being made.

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[17056] By Mr. Davis:

Q Mr. Cocke, have you reviewed the minutes of the Board of TWA held on May 13, 1960, which has been marked as Exhibit 365?

A I have, and I see that my notation in the diary of the Board of Directors Northeast Airline, must have referred to the fact that the Northeast merger was taken up at this meeting.

Q I will first ask you if the minutes of that meeting fairly and accurately reflect what took place so far as you know?

A They do.

Q Referring to the minutes which appear under the heading, "Trans World Airlines-Northeast Airlines Merger," do those minutes refresh your recollection in any way as to what took place with respect to recommendations or conclusions or action by the management of TWA relating to the Northeast merger?

A Nothing beyond what I have already testified.

Q Do you see this reference to the report presented by Mr. Leslie which states that he reviewed the benefits available to each company if the merger went through, et cetera? Does that refresh you any further than what you have testified to?

[17057] A It does not.

Q I see there was some discussion, and that Mr. Sessel moved a committee be established to review all aspects.

You testified about some action being taken. Is that the committee you were referring to, the one elected at that meeting?

A Yes.

It stated, "The committee consisted of Mr. Pierson, Mr. Thomas, Mr. Cocke, Mr. Leslie and Mr. Holliday."

A Yes.

Q Can you tell me to what extent that committee functioned, what it did?

A I don't recall how many meetings were held by this committee. I know at least one was held at which this material referred to by Mr. Leslie was reviewed. The com-

mittee recommended approval of the merger to the Board of Directors.

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[17060] Q On Wednesday, May 18th, you referred to news of Odlum's retirement. Then you have an entry reading, "Meeting, Board of Directors, Advisory Committee [17061] on Northeast Airlines merger."

A Yes.

Q What does that refer to?

A That was a meeting of the Advisory Committee of directors who had been appointed at the previous Board meeting to review the Northeast merger.

Q Can you tell me what took place at that time?

A A review of the material that had been prepared as to the advantages of the merger. Whether the decision was reached at this meeting to approve the presentation to the Board, I don't recall.

Q Can you tell me what view Mr. Thomas expressed at or about that time, or after the studies had been made or evaluated?

A Mr. Thomas was in favor of the merger after the material had been studied by TWA, and the discussions with the Board of Directors Advisory Committee.

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[Testimony—December 18, 1962]

[17206]

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Q I see you have a Board meeting on June 21st, and a lunch with Irving Trust Company, at the Waldorf.

What took place at that time?

A Lunch at the Waldorf was just a luncheon for the [17207] Board members at the Irving Trust suite at the Waldorf. I don't recall anything specific at this Board meeting.

Q Do you recall at or about that time some discussion or conversation relating to claims which TWA might have against the Hughes Tool Company or anyone else?

A It may have been at this Board meeting. I don't recall just exactly at which meeting it was discussed.

Q Leaving aside whether or not it was at this meeting or some other meeting, can you now give me your complete and total recollection of what was said?

A I think at this Board meeting or a later Board meeting, the recommendation was made by Cahill, Gordon that TWA had a cause for action against the Hughes Tool Company. I believe the Board then authorized Mr. Tillinghast to file such action when he felt it was necessary.

Q What I am interested in now is what knowledge or information you have with respect to any discussions between members of the Board, or between the officers of TWA who discussed what the facts were relating to this cause of action.

Did that take place at all, to your knowledge? Was there any such discussion?

A I believe it took place at one of the Board meetings, and also at an Executive Committee meeting when Mr. [17208] Tillinghast and the Executive Committee reached the decision to file the action.

Q I understand that. What I want to have you tell us, Mr. Cocke, is what was said, what facts were mentioned, what discussion took place.

A I believe Mr. Sonnett reviewed the causes for action, and it was their opinion that TWA had a valid cause for action.

Q What I am referring to, Mr. Cocke, is any conversation or discussion between the Board of Directors among themselves, or between the officers, or between the officers and the Board of Directors, identifying or describing what the facts were, what had taken place. Did that occur at all?

A My recollection is that Mr. Sonnett, and I assume other members of Cahill, Gordon—I think I testified to earlier, had talked to Mr. Rummel. There was a copy of the complaint shown to me a few days, I think, before this Board meeting or Executive Committee meeting.

I was asked if I had any comments on it. The only comment I made to Mr. Tillinghast was that I could not understand the Atlas-Northeast question, and suggested to him he should call Mr. Stretch, because we had had very close relationships with them before—Mr. Tillinghast [17209] should call Mr. Stretch and advise him beforehand, which I believe he did.

Q Anything else?

A I had no comment on the balance of the items in the complaint.

Q My question to you still is, do you have any knowledge or information with respect to any meetings or discussions between or among any of the officers or employees of TWA, or among the Board.

A I only recall that the general basis of the complaint was reviewed with the Board. I believe Mr. Sonnett reviewed it with the Executive Committee.

Q What is this meeting of June 23rd, involving Mr. Tillinghast, Mr. Leslie and Mr. Rummel?

A I believe that was a meeting to review the various reports that were being made in the company in an attempt to reduce their number, to make them more efficient.

Q At that time was there any discussion among yourselves as to the report that had been received from special counsel?

A I don't believe so.

Q. To your knowledge did Mr. Tillinghast ever inquire of you or anyone else at TWA as to what the facts were with respect to what had happened in prior years that [17210] justified this complaint, or anything of the sort?

A I don't recall that he did.

Q Do you know whether or not he made any inquiry of anyone, if not of yourself, of anyone else at TWA?

A I don't know.

Q I see on Thursday June 29th you have an entry of the Executive Committee meeting, re: HTC suit. That is the one you referred to?

A Yes, that must have been the Executive Committee meeting that I referred to previously.

Q Mr. Cocke, let me refer you to the testimony of Mr. Tillinghast which appears at page 4680 and 4681. You can look at my copy. I am referring to what appears beginning on line 14 at page 4680.

Do you recall such a conversation with Mr. Tillinghast?

A I believe I do, yes.

Q Does that refresh you recollection in any way as to what you said and what he said, and what discussion you had with respect to this complaint?

A Except for the addition that I have made, that I raised the question with him of the Northeast-Atlas inclusion in the complaint, which I testified to before. I expressed concern, as I believe Mr. Tillinghast states here, [17211] that being involved in litigation could perhaps affect TWA's image, and thereby its traffic.

Q Is there anything else you recall?

A I don't recall anything else.

Q Do you know if anyone at TWA ever made an effort to write down or summarize what they knew of what had taken place in the past, involving either Mr. Hughes or the Hughes Tool Company?

A Yes. I believe Mr. Rummel did. I recall reading a paper that he had prepared.

Q Do you recall approximately when? Can you identify this piece of paper in some other way?

A I believe it was after this period.

Mr. Williams: I think Mr. Cocke may be referring to the paper that was prepared by counsel, which Mr. Rummel has already testified that counsel went over with Mr. Rummel.

Mr. Davis: I don't know.

Mr. Williams: I don't know either, any more than what this witness has just said. I suggest it was that, because I know of no paper that Mr. Rummel has prepared.

Mr. Davis: Perhaps counsel doesn't know everything.

[17212] Mr. Williams: I am perfectly willing to admit that. I am the first to concede that, and you may inquire further of this witness.

I am merely trying to help you. I think that is the paper he refers to.

By Mr. Davis:

Q Do your know what Mr. Williams is talking about?

A The paper I am referreing to was prepared, I assume, by Mr. Rummel, which was a historical resume of the various equipment procurement activities. I believe it is the same paper that Mr. Williams is referring to.

Q You think it is the same piece of paper?

A I do.

Q Did you have any conversation or discussion with Mr. Rummel with respect to what was in that piece of paper?

A No.

Q Did Mr. Rummel tell you it was something that he had prepared?

A I believe so, yes.

Q Do you know if that piece of paper was discussed with anyone at TWA?

A I don't know.

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[Testimony—January 3, 1963]

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[17770] Q Now I would like to turn to your meetings or conversations or communications with Mr. Duckworth.

First identify what communication you had with Mr. Duckworth, and then I will ask you to tell us the substance of what took place.

A I talked to Mr. Duckworth in connection with the Executive Committee meeting at which the decision was reached to file the suit.

I guess I would have to say that his recollection was not a great deal more than mine, although I would like to amplify my testimony in that connection.

After reviewing the minutes and reviewing the workpapers which I believe you presented to me during the deposition, and the workpapers indicated that Mr. Rowe had expressed some difference of opinion as to whether this suit should be filed as an antitrust suit, or whether it should be filed as a civil suit.

I have searched my mind to try to recall the discussions at that meeting. It was a relatively short meeting that lasted for two hours. There were two other items discussed at the meeting.

I have a recollection of things that I have [17771] said. I am just not certain whether they were at that meeting or whether they were at other times.

I believe I covered the fact that I did not understand the question of conspiracy on the Northeast merger.

I am sure I said it had been discussed and talked about by myself that the merger was subject to the approval of the majority of the minority stockholders of TWA.

That my recollection was that it had to be approved by the Securities and Exchange Commission. It, of course, had to be approved by the Civil Aeronautics Board.

I am under the impression that in approval of mergers by the Civil Aeronautics Board, that one of their functions is to determine the proper financial arrangements between carriers on a merger.

In other words, the CAB, I believe, has the right to say that the financial basis of the exchange is not proper.

I guess I could just say that I had said to Mr. Tillinghast, and I am sure I said to others that I could not, as I see it, find any conspiracy. At least I hadn't been in any conspiracy.

[17772] The other matters, I had talked about the question that one time Mr. Hughes wanted to buy DC-7s, and the management wanted to buy Constellations.

I believe I testified to that effect. I personally wanted Constellations, and Mr. Hughes' suggestion that we purchase DC-7s was not followed.

I am sure I must have stated the fact that the management was anxious to build an overhaul base for the jet engines.

That Mr. Hughes' advice was opposed to such a program. That we should try to farm the engines out, and that we should try to fit them into our overhaul base as the requirement for space for the overhaul of piston engines decreased. We did not build an overhaul base.

I think at one time, it may have been at this meeting I mentioned these things, I believe it was to Mr. Sonnett, who told me that whether the decisions were right or wrong in any antitrust action, that it wasn't a question of whether the things were right or wrong.

I am just trying to give the substance of what the discussions were.

Further, in this Executive Committee meeting, in reading the minutes carefully, and the workpapers, there isn't much in the workpapers except the comments of [17773] Mr. Rowe in the workpapers that I recall.

There was the comment that this matter had been reviewed by Mr. Tillinghast with a number of directors informally, and that they had agreed that this action should be taken.

I just don't remember further discussions at that meeting.

* * *

[17827] Q Mr. Cocke, I would like to dispose of what took place following the time when you first saw this draft of complaint. My first question to you is whether or not you have any knowledge or information of any discussion of any kind with respect to the subject matter covered by that complaint, prior to this Executive Committee meeting of June 29th. In other words, between the time you first saw the draft and this Executive Committee meeting.

Do you have any recollection of any kind in that area?

A I think I testified that after I read the complaint I talked to Mr. Tillinghast about the question of the Northeast merger, and I couldn't understand it, and I felt that in view of my close personal relationship with James Austin and Dave Stretch, and the many discussions we had, I felt it was only courtesy that Mr. Tillinghast should call on Mr. Stretch and tell him, and he agreed to do so, and I believe did so.

[17828] I believe that is the only comment I made in that area.

As I said before, I have the recollection of making other comments that I testified to this morning. Whether they were made in that period, at the Executive Committee meeting or afterwards, I am just unable to limit it to that period of time. The only clear recollection I have is that when I read the complaint, that I talked to Mr. Tillinghast about the Northeast question, which was something that I was personally familiar with and personally had much to do with.

As far as the balance of the complaint is concerned, I made the comments that I testified to this morning, but I just cannot say for sure when I made those comments.

Q Other than this conversation with Mr. Tillinghast, do you have any recollection of discussing the subject matter covered by the complaint with anyone else that you have not already referred to?

Mr. Daly: During what period of time?

Mr. Davis: I am not asking him to go into the Executive Committee meeting of June 29th, which we are going to go into. I am trying to cover the period of all times, but I understand he has already covered the period from March 1st to the date he received the [17829] complaint. The only time open now is the time he received the draft of the complaint, and the Executive Committee meeting of the 29th of June.

Because he has difficulty, which I can understand, in identifying particular conversations in a particular period, I am now asking him if he has any recollection of any kind, or if he has any knowledge or information of any kind, with respect to any discussions relating to any of the events or matters referred to in this complaint, which he has not yet adverted to.

Mr. Daly: That is the reason I asked you for the time, because obviously he discussed it with me. You have put no time limit on it. Do you want it that way? He certainly discussed it with me.

Mr. Davis: I am still referring to the time up to and including the Executive Committee meeting of June 29th.

Mr. Daly: That is what I am trying to find out.

Mr. Davis: I am not asking him to address himself to that particular committee meeting yet.

The Witness: Mr. Davis, I think that I have given you all the information I recollect. I may be able to recall other things as we have further dis-
[17830] cussion.

By Mr. Davis:

Q I recall that this morning you referred to some discussion with Mr. Tillinghast when you in effect said that you did not understand what this conspiracy claim was, or words to that effect. Do you remember your testimony along those lines?

A Yes, I do.

Q Addressing yourself now to that testimony, will you give me as fully and as completely as you can, not only what you said to Mr. Tillinghast, but more importantly, what Mr. Tillinghast said to you when you told him whatever you told him.

Mr. Zeller: About the Northeast question?

Mr. Davis: About the conspiracy, or lack of conspiracy, about the complaint.

Mr. Zeller: You mean about the complaint generally?

Mr. Davis: About any of the facts covered by the complaint. So far as my recollection is—he only identified comments he made to Mr. Tillinghast relating to his lack of understanding of this conspiracy talk.

If in fact he discussed some other aspect of
[17831] the complaint with Mr. Tillinghast, my question is intended to elicit whatever knowledge he has with respect to any other area. Do you understand my question?

The Witness: I believe so, Mr. Davis. I made these comments to Mr. Tillinghast on the question of conspiracy. I don't recall what Mr. Tillinghast said. In substance, that this was a legal question, and no matter what I said—he appreciated my comments, but as far as my recollection is concerned, that this was the legal aspect of it, that I don't understand the legal problems in this. I think he said "That is a legal question."

I don't recall that he disagreed with what I told him, or I don't recall that he explained in detail why it was a conspiracy, even though I made the comments that I did. All I can recall is that he listened. I just don't recall what he said. There was no discussion that I remember as to "This is a conspiracy because of this or that." I don't recall.

By Mr. Davis:

Q Can you tell me a little more specifically or clearly what it is that you said to Mr. Tillinghast relating to this conspiracy?

A I told Mr. Tillinghast that I had had talks with [17832] Austin. These discussions, so there is no misunderstanding, were not in the context of negotiating the merger.

We were talking about the merger mainly from a traffic standpoint.

I believe I mentioned to him the conversation which I had with Mr. Odlum, which I believe was back in 1955 and 1956.

I told him that my understanding was that the merger agreement as it was drawn, required the majority vote of the minority stockholdrs. That it still had to be approved by the Securities and Exchange Commission. It had to be approved by the Civil Aeronautics Board, and my impres-

sion was that the Civil Aeronautics Board had the authority to rule on the exchange.

I don't think I can add anything to that. I was just trying to express to Mr. Tillinghast my feeling that I just couldn't understand it.

Q Did Mr. Tillinghast say to you in words or substance "Why don't you tell your story to counsel"?

A I don't recall that he did. I am sure I made this same comment to, whether it was John Sonnett or other members of the Cahill firm—I am sure that I have said this to them.

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[Testimony—January 4, 1963]

[17988]

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Q Do you recall any statements made by anyone relating to the desirability of trying to obtain some kind of a divestiture of the Tool Company's holdings in TWA?

A I am familiar that the question of divestiture is in the complaint. I recall being told or of reading some place that under an antitrust action was the only way in [17989] which divestiture could be accomplished.

Again, whether it was talked about at this meeting or if I read it some place, or if someone told me, I am familiar with and remember the fact that in an antitrust action that was the only action in which Mr. Hughes could be forced to divest himself of his stock in TWA.

Q Do you have any recollection of anything that was said relating to the desirability or lack of desirability of filing the complaint under seal?

A There was some discussion as to whether or not the complaint should be filed under seal, and it was felt in the best interest of the corporation, and I certainly agreed with this, that if there was any possibility of avoiding a

litigation—and before this time I did not know such a process was possible—that it was possible that the suit could be filed and sealed.

As I recall, from what I was told, or what my knowledge of it is, if the case was sealed and there was no publicity on it, in that kind of situation, which I can well understand, it would be a great deal simpler to reach a settlement of the differences of the two parties rather than after it had been unsealed and the case had started, and things had happened, where people said things. That it would certainly make it more difficult to reach a settle-
[17990] ment than when it was sealed.

Whether it was at this time—I certainly felt that filing it under seal, if that should be done, it certainly would be fine as far as I realized it, because I felt that I did not like to see TWA as an airline become involved in litigation.

Q In your answer you have referred to how you felt. I can understand that. What I am interested in knowing, Mr. Cocke, is whether you are able to testify as to what was said, or the substance of what was said by anyone there present at the meeting?

Mr. Daly: Could you ask him whether he expressed that feeling to anybody at the meeting?

A I am sure I expressed that feeling. I can't say whether it was at this meeting that I expressed the feeling.

In listening to whatever discussion someone was telling me about the fact that it would be filed and sealed, I don't recall anyone objecting to filing it under seal.

I think it was the consensus of everything that I heard anyone say that this would be the best thing to do in the hopes that this litigation could be avoided and a settlement could be reached before it broke open to [17991] public knowledge.

By Mr. Davis:

Q What was said with respect to the possibility of obtaining a settlement? Do you have any recollection of what anyone said at that meeting relative to that subject?

A I would like, Mr. Davis, to say that these recollections, I would not be characterized or have it said that it actually happened at this meeting.

I am trying to give my best recollection to the questions that you ask me. In the discussions as to how the settlement was to be arrived at, whether it was at this time or later, there were many discussions and many ideas or proposals to settle the litigation.

I remember that there was, I believe, a settlement, where it appeared it was going to be settled the day before.

Mr. Daly: The day before what?

The Witness: The day before the suit was unsealed, if that is the proper term. I recall in reviewing this material that there was a deadline set by TWA of acceptance, I believe, at 9:00 o'clock in the morning, before it was unsealed.

I recall there was a difference of opinion between Mr. Bautzer and Mr. Davis. In the notes that I [17992] reviewed—I was either told or read some place that Mr. Bautzer indicated he would be willing to settle on that basis, and Mr. Davis said he would not be willing to settle on that basis. No agreement was reached, and the decision was made by TWA to unseal the suit.

By Mr. Davis:

Q I am primarily interested in the discussion that took place at the time this decision was made on June 29th, Mr. Cocke. Do you have any recollection of what, if anything,

was said about what efforts would be made to obtain the deposition of Mr. Hughes.

A Again I am not limiting myself to this meeting. There was discussion that I recall, that one of the reasons TWA was to file the suit first was to obtain the right of prior deposition.

I am not completely familiar with these legal terms, but I can only say that it was obvious if TWA had the right of prior deposition, that the deposition of Mr. Hughes would be taken before the deposition of any of the TWA witnesses.

Q What I am interested in is what was said in that connection, if anything was said in that connection. Is there anything else you recall?

[17993] For example, did anyone say anything to the effect that if a court order was obtained for the deposition of Mr. Hughes, that would insure a settlement on particular terms, or anything like that?

A There had been discussions that if it was necessary for Mr. Hughes to make the deposition, that there would be a probability that it would be easier to reach a settlement, yes.

Q Do you recall anyone saying anything about Mr. Hughes' attitude about taking his deposition, or what he would do or not do depending on whether or not his deposition was ordered?

A There have been discussions as to the opinion, and I believe Mr. Slack made the statement, that if Mr. Hughes would not want to make a deposition, and that if he was forced to make a deposition, or that when that time came, the possibility of settlement would be greater.

Q Did anyone say anything at that time with respect to what tendencies or inclinations Mr. Hughes had displayed in the past, or was anything said in that area as to what would be likely to happen, what Mr. Hughes would be likely to do?

A Some people—I think Mr. Slack, and I am not sure who else—had the feeling that Mr. Hughes would not want [17994] to make a deposition.

I recall, in thinking over this, that I disagreed with that opinion. I brought up the fact that Mr. Hughes had made a deposition in Washington many years ago in connection with Senator Brewster, and I didn't have the same opinion, that Mr. Hughes would feel that a settlement would be made if it was necessary for him to make a deposition.

Q Do you recall anything being said about the possibility of Mr. Hughes had changed, and was no longer the same kind of person he had been at the time that he appeared in these Brewster hearings—any physical or mental disability about testifying, or any phobias?

Mr. Daley: Don't ask too many questions in one. Let him go along. You will get the witness all confused when you tack on all these things.

A There have been discussions as to the question of whether Mr. Hughes was, I guess to characterize it, the same man he was when he took on Mr. Brewster.

Q Can you tell me a little bit more as to what was said in that connection, and by whom, if you can identify who said what?

A As I said, I recall Mr. Slack made a comment such as that. I hesitate to say just who else made statements. [17995] I said, and I repeat that I expressed the opinion that Mr. Hughes, to use my own words, was [not] afraid of a deposition.

Q You keep referring to Mr. Slack. Mr. Slack was not at that meeting, was he?

A No, he was not, Mr. Davis. I am trying to give you the best of my recollection to your questions, and I haven't understood that your questions to me since this time have been limited to this meeting.

Q I understand that. How about Mr. Sessel? Do you have a recollection of what views Mr. Sessel expressed along this general area as to Mr. Hughes, and his probable action or course of conduct if ordered to be deposed?

A I would say that I can recall Mr. Sessel in substance agreeing with the feeling that Mr. Hughes would not want to make a deposition.

Q Can you recall more specifically the substance of what Mr. Sessel said?

A I don't think I can think of anything. The question which is in my notes here—excuse me, Mr. Special Master, that is another subject.

Q Let me refer you to what has been previously marked as Defendants' Exhibit 117. I want to caution you that [17996] these are handwritten notes purporting to refer to a telephone conversation between two other people.

Mr. Daly: Just show it to him and ask him to read it.

By Mr. Davis:

Q You are not to assume anything in there to be true.

Mr. Daly: Ask him if anything in there refreshes his recollection.

Mr. Davis: May I be permitted to direct him to a particular portion of the document.

Mr. Daly: Yes.

By Mr. Davis:

Q Look at what appears under item 2:

"May not tell other banks. Knew HRH: Scared by Cahill lawsuit, but worse than expected.

They have concluded if get him on stand would keep him there for two or three months."

Mr. Daly: Does that refresh your recollection?

By Mr. Davis:

Q Does that refresh your recollection in any way as to what else, if anything, was said at or about that time?

A I think this covers just about what I said. I didn't use the term "scared." I think the substance of this is there was a feeling—I see these notes are of a conver- [17997] sation with Mr. Sessel—that Mr. Hughes would just not want to give a deposition.

Q How about this reference if they could get him on the stand would keep him there for two or three months? Do you have any recollection of anything being said as to what would be likely to happen?

A I don't recall any reference to the length of time that Mr. Hughes could be kept on the stand. My comments are limited—not limited, but my recollection is the discussion of the fact that Mr. Hughes did not want to make a deposition, and that everything would be done to avoid him making a deposition.

Q Do you recall anyone saying anything as to why it was to be assumed that Mr. Hughes would not want to have his deposition taken?

A I think, as I recollect, the feeling that Mr. Hughes had over recent years become more and more—not a recluse, but made less and fewer public appearances—and perhaps in view of his tendencies in the past few years of avoiding public appearances, avoiding meetings with people, performing his business over the telephone—that he probably would not want to make a deposition.

Q Can you recall any more specifically what was said in connection with this tendency or desire of Mr. Hughes [17998] to avoid meeting people?

Do you have any more of a recollection as to what was said in that area?

Mr. Daly: I don't think he said that.

Mr. Davis: I think his expression was "avoiding meeting with people."

Mr. Daly: I do object to characterizing the testimony of the witness.

Mr. Davis: I don't think it will change his testimony, Mr. Daly.

Mr. Daly: I don't either, but I am here to protect the witness, and I intend to do it.

The Special Master: Answer what you recall about this particular subject matter.

A Only discussions over the years, and this is true to my knowledge, that Mr. Hughes formerly met more freely with people, had more contact with meetings and appearances; that to my knowledge for the past several years Mr. Hughes has not been—has not appeared in public as much as he used to.

Why that is, I don't know. I have my own opinions, but I have no knowledge of it.

Q It isn't so much of your knowledge about Mr. Hughes. I am interested in what anyone said they knew or thought [17999] they knew about Mr. Hughes.

A I would like to think a minute, Mr. Special Master.

The Special Master: Why don't we take a short recess, and then you can answer that.

(Whereupon, a short recess was taken)

[18000] The Special Master: Will you read the last question to the witness?

(The question was read.)

A I don't believe that I can add anything to what I have said.

By Mr. Davis:

Q Do you recall anything being said by anyone to the effect that an antitrust action would be the only solution to the problem, or words to that effect?

A Only the discussions that the knowledge where I read or heard that the antitrust suit would be the only type of an action that would force Mr. Hughes, or could force Mr. Hughes to divest himself of his TWA stock. I don't recall anything further than that. I am not sure just what you mean by your question as to the problem.

Q I was trying to refer to whatever anybody may have said identifying or describing what the problem was, if there was one. The relationship of the Hughes Tool Company being a large stockholder of TWA, or anything in that area.

Mr. Barr: I think the witness' inquiry was a fair one. I think Mr. Davis ought to say what problem he is referring to when he asks the question.

Mr. Davis: I am referring to the testimony of [18001] Mr. Tillinghast.

Mr. Zeller: That is fine, except I don't have Mr. Tillinghast's testimony in mind, and I have much doubt if the witness has.

Mr. Davis: I am not trying to get him to affirm or not affirm Mr. Tillinghast's testimony. I am asking this witness if he has any recollection if anybody said that a divestiture of the Tool Company stock in TWA would be the only solution to something which was either described as a problem or something.

Mr. Daly: I think it would help the witness more when you pin it down to something rather than say a problem.

Mr. Davis: That is the way Mr. Tillinghast identified the reasons for deciding to go the antitrust route rather than the other. That was one of the

ways he did. I thought that was a word [sic] of art among the management group at TWA.

Mr. Daly: You might ask him that. Maybe he will say yes.

A Would you read the question back, please?

(The question was read.)

By Mr. Davis:

Q I will rephrase the question this way. Do you [18002] have any recollection of what was said by anyone relating to the desirability for obtaining a divestiture order, or the reasons for wanting a divestiture order, or anything in that area?

A I believe the reasons that I recall was the fact that Mr. Hughes controlled 78 per cent of TWA, and that there were problems that had been involved in connection with the control of TWA by the Hughes Tool Company.

Mr. Davis: May I have the answer read to me?

(The answer was read.)

By Mr. Davis:

Q Can you identify what was said with respect to either the problems or control?

A I would in substance say that the problem because of the fact that Mr. Hughes or the Hughes Tool Company would not agree to the financing plans that had been offered by the lenders.

Mr. Daly: This was the substance of what was said by somebody to you at some time, is that right? Is that what you want to know?

Mr. Davis: I want to know what was said. I don't want your interpretations.

A In substance I recall that comment being made.

Q You don't know by whom?

[18003] A I don't know where or who made the comment. It was a discussion of the Hughes' problem. That to the best of my recollection is the substance of what was told me of the Hughes' problem.

Q Do you recall anything being said as to whether or not there would be more or less social stigma or social opprobrium in bringing an antitrust action rather than some other kind of action?

A No, I do not.

Q In your prior answers you made a number of references to Mr. Slack. Can you identify more clearly what your recollection is as to what Mr. Slack said that relates to the testimony you gave with reference to Mr. Slack?

A I don't believe I can. I think, as far as my recollection is concerned, I testified in substance as to the comments Mr. Slack made as to the various questions that came up.

Q Can you identify more than you already have the nature or substance of what Mr. Slack said, when, to whom?

A As I recall it, I have stated that I recall Mr. Slack had stated that he didn't feel that Mr. Hughes would agree to any settlement of the litigation until he was called upon to make a deposition.

I think I have also said—I may not have—Mr. [18004] Slack, I think as I recall it, commented that he did not feel that the antitrust actior was the right action to have filed. He felt that it wasn't an antitrust suit, that it was a civil suit.

Q Can you identify a little more clearly or more specifically what your recollection is as to what Mr. Slack said with respect to the kind of a claim that TWA had against the Tool Company?

A No more than what I have said. I believe I testified that Mr. Slack felt that because of the delays in the financ-

ing which delayed the equipment, and which caused the damages to TWA, that there was a basis for a claim for damages from the Hughes Tool Company.

Q I am interested in your prior answer relating to Mr. Slack's remark relating to his thinking that the antitrust action was not the proper or right action. I am interested in getting your complete total recollection of what Mr. Slack said in that area.

A I don't recall his exact words. I said, as I recall, Mr. Slack making the comment that he felt that the antitrust suit was not—in effect, the question of whether there was an antitrust action.

Q That is all?

A That is the substance of the conversation.

Leslie Deposition.

[12338]

* * *

By Mr. Cook:

Q Mr. Leslie, we have now covered the period up [12339] to 1946. Before getting into the 1946 affairs of TWA, I would like to ask you whether in any of the transactions about which you have heretofore been testifying, any other transactions or relationships of which you may be aware, between the Hughes Tool Company and TWA, for this period, from 1939 to 1946, are you aware of any indication whatsoever of an intent by the Tool Company in this relationship to influence TWA either to boycott aircraft manufacturers, as charged in the complaint, or to prefer the Hughes Tool Company in the acquisition of aircraft, as charged in the complaint?

Mr. Barr: Mr. Special Master, I object to the question insofar as it calls for a legal conclusion of the witness, particularly with reference to the term "boycott."

The Special Master: Objection sustained.

Q Mr. Leslie, do you know of any fact which tends to prove that in this period about which I am asking the Hughes Tool Company endeavored to influence TWA not to buy equipment from anyone but the Hughes Tool Company?

Mr. Barr: I also object to that question, Mr. Rankin, on the grounds that it calls for the witness to judge what will prove, what will not prove, and therefore is also calling for a conclu- [12340] sion.

Mr. Williams: I join in the objection.

The Special Master: The objection is good.

Q To amend that, rather than facts which tend to prove, facts which suggest or indicate that Hughes Tool

Company during this period endeavored to influence TWA to buy its equipment solely from Hughes Tool Company.

A I know of none.

. . . .

[12556] Q Mr. Leslie, during the period of time that you were with TWA, or with the Hughes Tool Company, had anyone ever told you of or did you ever hear of any requirement by the Tool Company that TWA should boycott suppliers of aircraft except Toolco?

Mr. Barr: Object to the form of the question.

Mr. Davis: May I have that read back to me, please?

The Special Master: Read the question.

(The question was read.)

The Special Master: What is the basis of your objection?

Mr. Barr: I believe there are a number of questions involved, all of which call for conclusions.

The Special Master: If you will separate the [12557] various questions, Mr. Davis—

Mr. Davis: As a matter of fact, I should have changed my question, because Toolco is not a supplier of aircraft, so the exception is meaningless. I was, unfortunately, following the language used in a brief submitted by counsel for TWA before Judge Metzner.

Q Mr. Leslie, let me rephrase my question this way—

Mr. Williams. We seem to have you thoroughly confused.

Q Did anyone ever tell you of or did you ever hear of any requirement by the Tool Company that TWA should boycott any supplier of aircraft?

A No.

Q Quite apart from statements which may appear in the complaint, do you know of anyone at TWA who has said to you or in your presence that the Tool Company at any time required TWA to go to one aircraft supplier rather than another?

A I know of no such statement, I have never heard of any such statement.

Q In connection with this acquisition of aircraft from Martin as a result of the negotiations conducted by Mr. Damon both with Martin and Convair, did you ever hear or did anyone ever tell you that the Tool Company suggested [12558] to TWA that they should go to Martin rather than Convair to fulfill the needs of those aircraft?

A There was never any suggestion made, to my knowledge of a direction to deal with Martin rather than Convair, or Convair rather than Martin.

* * *

[15108] Q I understand that, Mr. Leslie, and the other testimony that has been given with respect to TWA's plans, et cetera. The question I am now asking of you is whether you have any knowledge or information with respect to the contention which appears in paragraph 9 of the complaint, and for this purpose let me show you paragraph 9 of the complaint.

Let me hand you a copy of the complaint, and refer you to paragraph 9, which you will find on page 10 (handing to witness).

[15109] Without regard to the legal verbiage there, Mr. Lesile, if you look at 9(b), you see the phrase there "only upon the condition that plaintiff acquire all such aircraft from defendent Toolco," and my question to you is whether you have any knowledge or have ever been told by anyone that the Tool Company or Mr. Hughes in effect said to

TWA "I will provide you with this financing on the condition that you, TWA, agree that in the future you will acquire all of your aircraft from me, the Tool Company."

A I have never heard of such a statement.

Q Do you know of anything which you have construed as being such a condition?

A No.

[15117] By Mr. Davis:

Q Mr. Leslie, let's go to the next item which appears on Defendants' Exhibit 205, under date of January 31, 1947, which is entitled "Subordinated Convertible Notes, 2¾ per cent due 6/2/56," in the amount of $10 [15118] million.

Can you identify that transaction?

A Yes.

Q Would you do so?

A At the time of the change in the management of TWA, and the election of a new Board of Directors, an increased number of directors, the company was in very difficult financial straits, and I had observed, prior to this time, and prior to, in fact, December, that if the Hughes Tool Company were to—that I believed the injection of $10 million of new money would be sufficient to save the situation, that with these funds it could pay its bills, could manage to carry on until the cash gain part of the year, May, June, and the past investment could be saved, the past investment of the Hughes Tool Company could be saved.

The Hughes Tool Company chose to put these funds in, and at the time when there was not, in fact, sufficient funds available to it to pay the next payroll, and the $10 million, in fact, was sufficient to carry through until June.

I believe all the funds were drawn down by May, necessarily so, but the succeeding summer it turned out correctly,

that there was a cash gain period, and from that time on the fortunes of the company improved. [15119] There were no other potential purchasers of any obligations on the part of TWA, of TWA securities, and that's the way it was.

Q This $10 million was obtained by TWA by the sale to the Hughes Tool Company of $10 million principal amount of these subordinated convertible notes?

A That's correct.

Q And those convertible notes were convertible to common stock of TWA?

A They were.

Q I believe you previously identified that transaction and the conversion to some extent. We may cover it more fully later on.

At this point what I am interested in knowing is what was the purpose of the financing. You say at that time TWA was in poor financial condition?

A The purpose of the financing was to save the company from bankruptcy.

Q You made a reference that it was needed in order to meet payroll. You mean in the sense that it was cash immediately needed by TWA in order to pay its then current obligations?

A I couldn't have stated it better. That's correct, yes. [15120] Q It was not related, then, to the acquisition of equipment or aircraft at that time?

A It was not related to the specific acquisition of aircraft, or to the acquisition of specific aircraft, no.

Q Will you tell us whether or not TWA prepared any kind of projection relating to the need of this sum of money?

In other words, I would like to understand a little more clearly how this was negotiated and who took part in the development of this transaction.

A Somewhere in the material which TWA has, the Hughes Tool Company has, there is a memorandum, which I prepared, which gave a notional view of the requirements of TWA for immediate funds and a projection of the possible results in 1947 if in fact $10 million were put into the company. This would have been a memorandum by me to Noah Dietrich.

Q I do not have that memorandum readily available. I will see if I can locate it, and we will have you identify it if I do.

For my present purposes, can you, in a general way, give us your best recollection of what the essence of that analysis which you made at the time was?

[15121] A In September of 1946, with the grounding of the Constellations during that summer, and the loss of revenue that resulted from it, it appeared that the company was in default on its obligations, the sinking fund debentures which we have just spoken of.

Q Obligation to the Equitable?

A To the Equitable. In October of that year, or November, the pilots went on strike for a short period, and this aggravated a situation which was then dedicated to expansion, and the company was forced to cancel out on certain equipment contracts with Lockheed, default on those, and despite this, at the end of the year, was—had insufficient cash to pay the payroll through the month of January.

It was at that time that the so-called change of management occurred, during that period, December. By that time, some time during December, November, December, we had tried desperately to find a way out of the financial problems that the company was facing by way of RFC loan or export-import bank credit, unsuccessfully, and we then came to the conclusion that—I came to the conclusion that a poor man's solution, $10 million, would serve to hold the

thing afloat on the theory that we could in fact compromise these contracts with Lockheed, we could [15122] back up our bills if necessary with the fuel companies, and we would not have a drain exceeding $10 million if we went about a contraction of the company's employment and services, and that if we could get to June we would be home and free, and this is what was done.

Q Can you identify the persons or individuals who were active in the negotiation of the terms, provisions, of this $10 million advance that the Tool Company made, terms, provisions or conditions?

A I believe we had a situation in December of 1946 where it was reckoned by the Hughes Tool Company, the most substantial stockholder, that the then management would not be able to cure the problems which they themselves were responsible for, and that as a result there needed to be a change in that management, who took a more realistic view of the problems of the company.

As a result, the Frye group went out, there was a new Board of Directors came in, which were very substantially, in fact, completely nominees of the Hughes Tool Company. There was no president, there was a management—there was an Executive Committee, a Management Committee—I am not quite clear what the term was—which was comprised of directors of TWA, Noah Dietrich, Palmer Bradley and Leslie.

[15123] That committee negotiated the advance of these funds with the Hughes Tool Company, and the terms, and the rate, I believe the record would show, was the prime rate for money ruling at the time the notes were issued.

Q That rate of 2¾ per cent was the then prevailing prime rate?

A I believe so.

Q In connection with this advance or financial support that the Tool Company gave to TWA was there any agree-

ment or understanding expressed or implied that TWA thereafter was to acquire all of its aircraft only from or through the Hughes Tool Company?

A There was no such consideration.

Q Was there any agreement or understanding that you know of or have ever been told about, either expressed or implied, that thereafter all financing by TWA was to be done from or through the Hughes Tool Company?

Mr. Barr: Mr. Davis, would you specify for the record agreement between whom?

Mr. Davis: Any agreement or understanding between anybody that he has ever heard of, ever been told about, any knowledge or information he has as to its existence. There cannot be an agreement between people when there is no such [15124] agreement, Mr. Barr.

Mr. Barr: I assume that the question is whether there was such an agreement, and I assume that if there were such agreement there would be people.

Mr. Davis: If he has ever heard of any agreement between anybody, whether expressed or implied, whether the effect of it was, the intendment of it was, that TWA was to acquire aircraft only from the Tool Company or only through the Tool Company.

I want to know from this witness and from any other witness, from counsel for TWA, if they would like to tell me, whether any such agreement or understanding ever existed, and if so, between whom.

Mr. Williams: I am not being cross-examined, you understand, this is directed to the witness.

Mr. Davis: It is really directed to Mr. Barr, but it is directed to the witness also, and to such counsel of TWA who care to respond.

Mr. Barr: I am only trying, Mr. Davis, to understand the question. As I understand it now, your question is was there ever at any time any agreement between anybody with respect to this. Is that—

Mr. Davis: That is what I am trying to [15125] cover. At this point I am particularly addressing myself to the $10 million that was advanced by the Tool Company at a time when TWA was on the verge of bankruptcy, but my question to this witness can be broad at any time.

I dont care how it is answered, Mr. Barr, just so long as I get an answer.

Mr. Barr: I dont care how it is answered either, Mr. Davis. All I am concerned about is the question.

A I know of no understanding—

Q At any time?

A (Continuing)—at any time, related to the purchase of equipment being required to be done through Hughes Tool Company or Hughes.

* * *

Rummel Deposition.

[Testimony—September 11, 1962]

* * *

[12738]

* * *

By Mr. Davis:

Q Let me ask you this, Mr. Rummel: Those functions which you were performing with respect to the contracts, were they functions which normally would have been performed by TWA itself if TWA had itself placed those contracts with those manufacturers?

A To a considerable extent, yes. I think developing the contracts themselves, working closely with the manufacturers in the development of the airplanes, particularly the 880, very likely not.

In other words, the degree of responsibility for developing the contracts, along with counsel, was much greater in the case of the Hughes Tool contracts for the jets than had been my lot before that time in TWA.

Q I still don't understand your answer, Mr. Rummel.

A Well, what I am saying, Mr. Davis, is that in addition to discharging the obligation that the Tool [12739] Company gave me with respect to administering the contracts, I was primarily responsible for developing the contracts themselves, as well as the airplane configuration, working closely with Mr. Hughes and others during that period of time that they were being developed. This responsibility was a degree or so greater than I ever had previously in my work with TWA.

Q I appreciate that you were doing more than you had previously done. My question was intended to discover whether the work that you were doing was the kind of work that normally TWA or American or United would have

done for the development of the specifications and the administration of the contracts if TWA had been in direct contractual relations with the manufacturer.

Mr. Williams: I object to the question. My trouble with it is that I don't know what are normal procedures with respect not only to TWA but also the other airlines mentioned.

Mr. Davis: It isn't a question of procedures, Mr. Williams. It is a question of whether or not this witness, who did the work, is in a position of letting us know whether the work he was doing during this period was in fact any different than the kind of work that would normally be done by an air carrier placing a contract with [12740] those manufacturers.

Of course, it varies with each contract, I understand that.

Mr. Williams: And with each airline, I assume.

Mr. Davis: With respect to any contract for procurement of aircraft—

Mr. Williams: That is my trouble, I don't know. You haven't laid the foundation for it.

Mr. Davis: Certainly I have laid the foundation for it. I am asking this man if anything he was doing was unusual. He answered me by saying he had never done that kind of work for TWA before. That was not my question.

Mr. Williams: All right.

The Special Master: I am bothered by the inclusion of the other airlines in your question. This witness is qualified to testify in answer to this question concerning TWA's activities and his own, he can make that comparison.

Mr. Davis: Mr. Rankin, may I point out we know from other parts of the record, and to the extent it

is not already established, it will be established, that TWA was functioning in a some- [12741] what different manner than other airlines were with respect to procurement of aircraft because of its inability to finance itself. My question, it seems to me, is relatively simple. This witness, it seems to me, by the nature of the work he was doing, is more than qualified to answer the question.

Presumably, as we have already established with some pain and detail, an aircraft of a particular type by a manufacturer requires the development of specifications with respect to all these vendor parts that we discussed a moment ago, and all these choices that an air carrier makes.

This witness has testified that he was spending a great deal of time developing specifications for TWA with respect to those aircraft, doing the kind of work that any airline has to do whenever it places a contract for aircraft.

He also says he had to administer the contracts.

Obviously the amount of work in administering a contract will vary contract by contract. But it seems to me it is a kind of activity that any airline has to undertake whenever it places a procurement contract for aircraft.

Mr. Williams: Who said so?

[12742] Mr. Davis: Somebody has got to do it, Mr. Williams.

Mr. Williams: You never asked.

Mr. Davis: Certainly. The witness has answered the question, saying that he had to do it because in fact the Hughes Tool Company was the other contracting party, and he understood, as I remember his answer, it was for some legal reason.

The Special Master: You may answer the question as to whether it is the kind of work that TWA

would have to do if it was contracting directly with a manufacturer.

A Part of it was, and part of my activities were not. I think generally TWA did much more. Mostly, when I was working with Mr. Hughes on equipment matters, with respect to the development of new airplane preliminary designs, advanced models of existing designs, and that sort of thing, we did a great deal of activity and a great deal of exploratory work at the behest of Mr. Hughes, and a great deal of it was exploratory in nature. That is, much of what we did did not result finally in a contract. It may have produced a competitive situation of advantage, it may have produced something that looked good, but didn't really turn out to be a good [12743] possibility, and I believe that TWA probably did much more of this than some of the other airlines.

Q What do you mean by developing a competitive situation of advantage?

A Well, possibly the best answer I could give is by referral to the Martin-Convair situation. When we procured Martins, in the beginning Martin was not even in production. They had withdrawn aircraft from their production line. Convair was the only one building airplanes of that type. At the conclusion of our negotiation both were chafing at the bit to build airplanes for us.

Q I am still not sure that you have described the situation to my understanding, at least. You mean that as a result of the work done by TWA and the interest which Martin developed for supplying aircraft to TWA there developed a competitive situation between Convair and Martin?

A TWA and Hughes. Mr. Hughes was quite directly concerned with that situation.

Q My question was to have you describe the development of a competitive situation of advantage.

A Well, only—what I mean by that is that there is greater leverage in dealing if there is a competitor [12744] present on the scene than if there isn't.

Q What I am trying to get you to describe now is what was done by TWA to develop such a competitive situation among manufacturers.

A Well, all I can, I think, do is give some more examples, Mr. Davis. For example, I am absolutely certain Donald Douglas, Jr. would say the only reason on earth that the DC-6B exists, which we did not buy, was TWA's negotiation with Douglas. I don't mean to say that it was not a logical development that would finally have evolved, but it in fact did evolve as a result of our negotiation. There are other cases. This is during the time when we were considering the procurement of Constellations and Douglas airplanes.

Q I appreciate that, and I didn't mean to deter you from explaining further the development of a competitive situation in connection with the Martin situation—

A Oh,

Q (Continuing)—by citing another example. Can you finish the identification or description of the competitive situation which was developed or encouraged by TWA in relationship to Martin and Convair, or whatever you have reference to?

[12745] A To give it to you in a nutshell as best I can recall it, TWA had ordered Martin 3—I think it was 303s, the model called the 303. When I say "ordered," this was a—well, in the nature of an agreement to agree between the two companies. When the pilot came along, and as an aftermath of it, primarily, this was allowed to lapse.

Martin had sold numbers of airplanes to others, and for various reasons, a rather poor industry situation, other airlines also canceled. Not after us, but in that particular period of time.

Martin finally withdrew the 202 and the 303 from the market. In the meantime, Convair had produced experimentally the 110 and then the production 240, and had succeeded in selling many of these airplanes in various configuration, various detail configuration, to other airlines, and they had remained in production.

TWA had DC-3s flying against Convairs. It was badly under-equipped at that time in many areas, in my opinion, and the short-haul area was one of them.

We undertook, with the concurrence and support and participation of Mr. Hughes, negotiation with Convair. This was for an advanced version of the 240. The specifications were quite well developed—I should say it this way: The specifications were virtually completed, the contract [12746] was well along.

However, during the period that we were developing the arrangement with Convair it became clear that Martin might have an interest in getting back in the business, because they had at hand some twelve odd or fifteen odd, we weren't sure which, sets of airplane components, fuselage sections, wings, and so forth, that they had built, and simply had on hand when the airplane was taken out of production.

In working with Convair, and with Hughes—in working, excuse me, with Martin, and with Hughes participation to some extent, Martin offered proposals for the lease of 202As on what we thought was quite a reasonable basis, because they were using up stuff they had on hand, the 202A being a derivative design from the 202. The systems were quite different in the 202A than the 202. It was a much advanced version in many respects.

At the same time, they proposed a longer pressurized version of the 202 called the 404, and TWA, and I think Hughes, were instrumental—I know we were, in fact—in talking Martin into going forward with that particular kind

of a derivative model. Eastern Airlines also became interested in such an airplane. Eastern, I might say, were negotiating at the time with Convair on the same model that [12747] we were. We carried, I think, the main brunt of it, but they had gotten on board. I am speaking figuratively.

Convair suddenly withdrew the airplane from the market, the advanced version of the 240, and offered instead the 240. At that turn of events interest centered on the Martin airplane, that is, the leased 202As and the purchased 404s.

I am only trying to illustrate, and I am afraid in a too long winded manner, how a competitive situation grew, developed, in this particular instance.

Q Don't apologize for being long winded, Mr. Rummel. You are giving us facts, and that is what we want here.

A Does that answer your question, sir?

Q Yes, although I had understood that we got into this development of a competitive situation when in one of your answers you indicated that the amount of work that TWA undertook in the development stages of some of these jet contracts required you to do more than you felt normally was required, but that it was in that connection, at least, as I recall it, that you used the expression that it might have developed a competitive situation of advantage, and I was wondering if you would explain that a little further.

A I think we did more than we would have done had it not been for Hughes' keen interest in equipment, Mr. Davis, [12748] more or less through the years. I am quite sure TWA would not have undertaken, even in a preliminary way, the development of supersonic transport in 1955 and 1956.

There are numbers of examples. It was extremely interesting, it was a wonderful thing to try to do, I think, to put TWA ahead equipment-wise, but we would not have done this to the degree we did, I am sure, had it not been for Mr. Hughes' interest in these things.

Q I don't want you to feel that you are being long winded when you describe what happened, Mr. Rummel. At this point I would like you to describe more fully what was in fact done by TWA, by you, in this period 1956, when, as you previously testified, you found yourself doing more than normally would be done.

I am trying to understand what it is that you did that was more than normally would be done.

A Well, I ought to be clear then. Perhaps I have confused the record somewhat. The Martin-Convair situation I am speaking of goes clear back to 1947, I guess, maybe 1947-1948, in that particular period, maybe 1949.

Q Now would you—

A Well, we undertook the Convair to develop an advanced jet transport.

Well, let me go back. We undertook a Convair to [12749] develop an advanced transport, one which would give TWA a competitive advantage. This was undertaken I think back in 1954, thereabouts. Numbers of meetings were held over an extended period of time with Convair people, all of them highly secret, I working with Convair, had Convair lay down numbers of various design possibilities, which we then proceeded to evaluate.

We looked at turbo-propeller driven airplanes, we looked at jet airplanes, we looked at combination airplanes.

For example, one airplane which at one particular time looked good was an airplane that was equipped with jet engines for transcontinental high speed use, the same air frame was equipped with turbo-prop engines for international use.

The plan was not to change engines, but to have a common air frame. First it was thought this couldn't be done but we prevailed, and found that at least on paper it could be done.

However, we didn't proceed with it. We went through a series of designs.

The breakthrough finally came in the development of better engines by the engine manufacturers, which made jet transports feasible and more attractive for this kind [12750] of series than turbo-props. I might point out that to most manufacturers TWA represented an unusual opportunity, because we flew both international and domestic service, and most manufacturers wanted, if they could, to build one type of airplane, rather than go to the expense of developing two, one for each area.

So they were prone to work with us. Also, many of them tended to seek us out because of the belief that Mr. Hughes could go ahead with just about anything that he might desire to go ahead with, which is understandable.

[12751] After considerable effort we—I say "we"; Convair, really, with my working with them—wound up with the Model 18. Contracts were developed, specifications were written. A lot of this work was done by me pretty much alone in the technical phases, although I did bring in some TWA experts on a secret and quiet basis because of wanting to hold this close because of a competitive thing, did bring in people from time to time. The further along the project went, the more people I brought in, along with the concurrence of Mr. Hughes.

I had lots of contacts with Mr. Hughes during this period.

The Model 18, for a number of reasons, was not—we didn't move forward with it. However, while we were developing it we also were working on the jet stream, we were working with AVRO Canada on the development of a very high-speed airplane, we were keeping negotiations alive at Boeing and when the Model 18 ceased to be a reasonable—reasonably practical possibility, Convair undertook the development of the Model 19, in a very preliminary way, to

evaluate it, and that was followed with the Model 20, which got to the General Dynamic's board level, as I understand it, and was so advised at the time, and that's where it stopped, and some time later Convair came forward with the Model 880, and approached [12752] Mr. Hughes with that plan, whereupon he called me, and I became active in the 880.

Our dealings with Boeing had been more or less steady through the years with respect to participating in meetings on basic configuration of the airplane. They had the practice of developing designs, wind tunnel models, preliminary designs, and would talk these possibilities over with a number of airlines, TWA being one of them.

In this connection, there were a number of meetings in which Mr. Hughes participated personally with the Boeing people, myself and others.

We also looked at the Britannia that I mentioned this morning in this general period of time that you mentioned Mr. Davis, we looked at the Viscount—we did more than look at the Viscount—and I on my own had laid down a few designs in a very preliminary way besides. That's all I recall at the moment.

Q This has been very helpful, Mr. Rummel, but I am still a little unclear with respect to one of your prior answers. Let me see if I can get your mind on what is troubling me.

I understand your testimony to be that sometime in 1956 you assumed these additional responsibilities as a special Hughes Tool Company representative. Am I correct [12753] so far?

A Yes, I was given these responsibilities almost concurrently with signing the contracts.

Q Those were responsibilities dealing with then existing contracts with Boeing relating to fifteen 131s, eighteen 331s?

A It included those, yes.

Q That was a contract initially between Boeing and the Hughes Tool Company?

A Yes.

Q Then there was a contract with Convair relating to thirty 880s?

A Yes.

Q Then you referred to a number of contracts relating to 300 jet engines?

A Yes.

Q And a contract relating to two flight simulators?

A That's right.

Q I was trying to get you to identify or describe the nature of the duties or functions which you were performing during this period relative to those contracts which might be regarded as abnormal in the sense of more work than would normally be undertaken by an airline if the airline directly had such contracts. You follow me so [12754] far, do you follow me at this point?

A I think I do.

Q I understood you to say that during that period, and in connection with those contracts, you had been doing more than would normally be required or anticipated, and I believe you said in connection with the negotiation of those contracts, and my recollection there is that somehow or other, in describing that area, is when you said that you had been doing quite a bit of the development work, or TWA was, that was unusual, but it had the possible advantage of developing a competitive situation, and I would like to be sure of now is whether or not you have fully described what you meant by that part of your answer. Is that what you had in mind when you gave the answer you just have given with respect to the Convair development of Model 18, 19, 20, et cetera?

A Well, I wasn't speaking only of the—I was not speaking only in relation to administering the contracts. I

was speaking of my general relations with Hughes and the Hughes Tool Company. I don't think there would be anything else at the moment, Mr. Davis. I suppose—I know that a great deal went on. It has [sic] a highly active and dynamic situation.

Q I appreciate that, and I am sure we will have an [12755] opportunity of developing it in an orderly fashion, contract by contract. I am trying to get a general idea only at this point.

Can you describe what you mean by saying that by reason of these activities there might have been the advantage of developing a competitive situation? Were you referring to a competitive situation between Convair and Boeing, is that—

A Well, we sure had one. Nothing would have pleased Boeing more than to see Convair go away, so to speak. In developing the 880 Boeing undertook the development of a smaller jet than they then planned to build. At least, they evaluated such a design to see how it stood up. Their approach was such that what they came up with was not too attractive, because it was too much like the bigger jet, compromised their production line too much. In any event, it wasn't undertaken at that time. It was some time afterward that they built the 720 which in the beginning was a direct competitor to the 880 for the United order. So in the broad sense Convair certainly was competitive to Boeing. What we were really trying to do was to get an airplane that was better for TWA than the others appeared at that time to be willing to produce.

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[Testimony — September 14, 1962]

[12934]

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By Mr. Davis:

Q Mr. Rummel, if I may resume where we were when [12935] we were discussing what I meant, at least, by availability of aircraft at any particular time, without any reference to a particular year or period of time, I would like to have you tell me how you would describe, first, availability of aircraft in the sense of there being commercial aircraft available to an airline from various manufacturers for consideration by an airline. How would you describe that kind of a market, if I may use that expression? So that you understand me completely, I will next ask you to tell me how you would like to refer to or describe manufacturers who potentially could become a source of supply of aircraft to a commercial airline, so that I can use your definition.

A Mr. Davis, it may be partly a matter of personal habit on my part as to how I use that term, and I haven't thought about it too much until the question arose here yesterday and now, but I would broadly say that an airplane it not really available until it is offered by the manufacturer.

Another broad category I think would be simply possibilities, or, if you like, potential, either offerings or manufacturers who might have the potential for producing aircraft if it was to their interest to do so.

I would say these were—this broad category [12936] would be potential offerings. I think broadly I view the word "availability" as availability for consideration rather than implying that they were truly available in the sense that an airline could consummate a deal.

I am only trying to explain how I use this term.

Q Assuming that an airline felt the need to either increase its existing air fleet or to acquire a new or additional fleet, and no aircraft manufacturer had had the good sense to come and offer you something. I don't know whether that is a realistic assumption, because I suppose that aircraft manufacturers keep pretty close tab on the planning and probable needs of commercial airlines.

Is that last statement of mine accurate?

A They give the impression of trying, and I haven't seen any that are too bashful.

Q Is it a fact that those interested in manufacturing aircraft for an airline normally keep pretty well current with the thinking and planning of commercial airlines so as to anticipate their needs?

A The major established manufacturers do generally keep up contacts with the airlines, not only to see what the airlines might be thinking of, but to influence that thinking.

[12937] Similarly, manufacturers who, in my experience, are seriously considering the commercial business to some extent, and some of them do the same thing.

Q You have already answered what I am trying to develop. You used the expression "major established manufacturers" as one group of manufacturers. Will you please explain what you mean by major established manufacturers?

A Douglas, Lockheed, Boeing, Convair, in this country.

Q I think in one of your answers yesterday you also referred to the possibility of going abroad. While we are on the subject, will you identify what you consider to be the major manufacturers abroad?

A I might add this: If there is an implication here, we have had virtually no contacts with Lockheed in recent times.

Q We will cover the entire period very fully, Mr. Rummel, but we have to get some basic understandings, we have to learn how to walk before we can try to run.

First, on these domestic ones, those are the major established manufacturers since the war, you are referring to the period subsequent to 1945, is that correct?

A I am referring to the current period.

[12938] Q I would like to refer to your understanding or what you mean by major established manufacturers for the period subsequent to World War II. Would you add any more to this list?

A Yes. I would include Martin during the period you mentioned.

Q Any other?

A Well, I have to qualify this somewhat. I think Republic, while they were not established in the sense of producing commercial transports, they were a major manufacturer who had undertaken the development of a commercial transport.

Incidentally, we also gave the Rainbow some consideration. I don't believe I included that in the list yesterday, but it was in that approximate time period. It was one of those oversights. I listed all I could think of then. I suppose there could still be more.

Mr. Williams: Rainbow is Republic?

The Witness: Yes, sir.

Q That identifies what may be described as the major established manufacturers of commercial aircraft subsequent to World War II, is that correct?

A In this country.

[12939] Q In this country, that's right.

A Excuse me. Major manufacturers of commercial transports.

Q Commercial transports?

A Yes. There certainly were other major manufacturers but producing military ships.

Q I understand that.

A Yes.

Q Commercial transports, by that you mean aircraft useable by an airline such as TWA, American, United, and the like?

A And the like, yes, and smaller airlines too.

Q Prior to World War II was the list of major established manufacturers of commercial transports any larger than those that you have identified as being in existence subsequent to World War II?

A Curtiss-Wright was in the transport business or getting into it at the onset of the war. The war interrupted its production.

Q May it be characterized as a major established manufacturer of commercial transports subsequent to World War II?

A Well, not really technically, because they didn't produce the commercial transports.

Q Neither did Republic?

[12940] A That's right, but in that same context, yes, they were a major manufacturer.

Q You see, you are now putting into one category what before we were going to try to put into two categories. I am trying to follow your understanding of descriptive words, Mr. Rummel.

A We are drawing an exceedingly fine line. I will do the best I can with it.

Q Before we go into the foreign field, I thought that we were going to try to use some descriptive words for the purpose of first identifying major established manufacturers of commercial transports in the sense of manufacturers who in fact were in a position to or did or to

whom an airline could go to for the purpose of obtaining either additions to an existing fleet or acquiring a new fleet, and we were going to separately try to identify those major perhaps also established manufacturers who had the potential of entering the field of manufacturing commercial transports because of their facilities, knowhow, or their evidence of an interest or desire or possible desire to enter the field. Are you following me?

A Well, I think I am.

Q How do you want to identify these two groups of manufacturers that I am trying to establish, Mr. Rummel? [12941] A Well, I will try to follow your definition, Mr. Davis, if that is—

Q No, I would just as soon adapt myself to your thinking so that I can understand what you are trying to say.

Mr. Williams: I thought the witness had, as a matter of fact. I am confused.

Mr. Davis: I am trying to find out how the witness wants to identify a group such as Curtiss-Wright and Republic Aviation, and possibly others, as distinguished from a group such as Douglas, Lockheed, Boeing, Convair and Martin.

Mr. Williams: I understand. Let him try.

A Well, I would identify them all as major manufacturers. The difficulty, if there is one, may have arisen in going further with that in terms of what was actually finally produced and what wasn't, the degree to which they, you might say, made the grade and became established. I elaborated with respect to the Republic Company and the Rainbow, and I made a similar comment on the Curtiss situation, that is, the airplane, to my best recollection, was, in fact, not used commercially until after the war, the airplane that was intended for commercial use never was so used.

[12942] I would think the definition I gave before would hold, if that is agreeable with you.

Q Let's go at it this way, Mr. Rummel: Can you identify any other major established manufacturers in the same group as Curtiss-Wright and Republic Aviation as distinguished from the Douglas, Lockheed, Boeing group?

A Well, it depends on the period of time that is being discussed.

Q The period subsequent to World War II.

A Well, they had various offerings, some were in production in some periods and some were not. I categorized those four, that is, Douglas, Boeing, Convair and Lockheed, as major established manufacturers of commercial aircraft.

Q That I understand. Now I am asking you to name the manufacturers who were potential manufacturers of commercial aircraft that conceivably an airline could have gone to to discuss their program planning or needs for equipment, other than the group of Douglas, Lockheed, Boeing, Convair and Martin, for the period subsequent to World War II.

A Northrop, Republic, Curtiss-Wright, North American, in this country.

Q That is all we are discussing at the moment.

A Gee, nothing more comes to mind at the moment.

Now, we did look at helicopters during the early [12943] developmental phase, but I am not including those in the broad definition of aircraft, unless you want me to. They represented special purpose early developments that we did look at.

Q By "we" you are still referring to TWA?

A Me and my department.

Q For use by TWA?

A Yes.

Q Without going into the details now, because I do want to get started with specific situations, can you give

me the period of time when consideration was given to helicopters, and generally the type of helicopter you were considering?

A The early reviews of helicopter developments were aimed toward our obtaining a better understanding of the significance or probable significance of these developments on future operations. In other words, we were trying to find out whether or not we should be interested, whether or not these machines had at this time anything really to offer.

Q When was this, "at this time"?

A I believe, as best I can recall it now, the very early studies and meetings with the manufacturers were—I really can't be sure. I would be guessing.

[12944] Q For this purpose, give me your best informed judgment.

A Well, my guess would be in the 1945 to 1946 period, or thereabouts.

Q Thank you.

Before we—

A These were the first such investigations.

Q There were a number of them, were there?

A Well, we followed helicopter developments not constantly, but as I viewed it appropriate through the years.

Q Before we resume with the identification of aircraft manufacturers abroad, I would like to get some information and possibly dispose of these potential domestic manufacturers which you have identified.

In the period subsequent to World War II, did Curtiss-Wright ever reach the point where it was in a position to offer to the airlines of the United States a commercial transport? Did it ever get itself in that position?

A Curtiss did offer transports. I can't recall whether it categorically was after the war or during the closing phases of the war. They offered the CW-20 to commercial airlines and attempted to sell the airlines on [12945] the procurement of those type airplanes.

Q Did they in fact manufacture any TW-20s—

A CW-20s.

Q (Continuing)—for use by any airline? In other words, what happened to that effort or intention of Curtiss-Wright subsequent to World War II?

A I don't recall all the particulars now, Mr. Davis. In any event, the airplane as such was not produced in any quantity. I am having difficulty recalling whether it was produced in limited quantities or not.

Q Is it fair to say that in fact following World War II, let's say, after 1945, or after the cessation of hostilities, Curtiss-Wright, in effect, abandoned its effort to enter the field of manufacturing commercial transports for the airlines of the United States? Is that a fairly accurate statement?

A It hasn't produced any.

Q What I am trying to find out, Mr. Rummel, is if in the period subsequent to 1945 Curtiss-Wright offered its facilities for the manufacture of commercial transports to airlines who were looking around for manufacturers of aircraft.

A At the moment I don't recall any specific offerings as such from Curtiss-Wright following the CW-20 activity. [12946] I am speaking now of airplanes built by the airplane division of the Curtiss-Wright Corporation.

Q What I am trying to get at, Mr. Rummel, and I am having a little difficulty in following your train of thought in response to my questions, is simply this: If an airline, name one, wanted to acquire additional commercial transports for its fleet in the period subsequent to 1945 could it go to or were the facilities of Curtiss-Wright available to it, was Curtiss-Wright one of the manufacturers to whom it could go for negotiating the acquisition of additional transports, was that an available supply of commercial transports subsequent to 1945?

A I can't be that definite, Mr. Davis, with respect to the year 1945.

Q Subsequent to 1945, or subsequent to 1943.

A There was a time following the war when Curtiss-Wright got out of the business of making commercial airplanes but I do not recall, I am sorry to say, the specific time that any decision was made by them in this respect.

Q I understand that. I am not trying to get a specific time, but can you give me an approximate period when they no longer were available to you for that purpose?

A As I recall it, it would be one or two years following the war.

[12947] Q In other words, somewheres between 1945 and 1947 they dropped out of the picture as an available source of supply for commercial aircraft, for commercial transports?

A That's my present recollection. I do remember they at one time talked about some sort of commercial version of the Ascender, but it didn't become an offering.

Q The Ascender was a military aircraft?

A Yes.

Q What happened to Northrop?

A In what regard? The same thing here?

Q In the same regard. How long did they continue to be a possible source of commercial transports for an airline who might be looking for additions to its fleet or the acquisition of a new fleet of commercial transports?

A Well, the last serious effort on Northrop's part that I recall is development of the Northrop tri-motor.

Q That was when?

A Well, yesterday I bracketed that as early following the war. I am not certain whether it was really two years or three or four. It was sometime during this period.

Q What is this three-motor aircraft—

A Excuse me. I can say that it was before—sometime during 1946.

[12948] Q That they dropped out of the picture?

A That was the time that they were developing the tri-motor.

Q What was this tri-motor, and how long did they stay as potential suppliers of commercial transports?

A Well, they continued to try to sell it for some time, Mr. Davis. I don't really recall how long their efforts lasted. They produced a limited number. I don't recall the specific number, but I would guess, if I am allowed to do so, maybe 12, 15 or 18 airplanes. I am not certain.

Q You are permitted to give me that kind of an answer Mr. Rummel.

A Well, I just am not clear as to the specifics. That has been a long time ago.

Q I understand that, but certainly with your experience you can give me an idea as to when you no longer considered Northrop as a manufacturer that you should take into consideration as a potential supplier of commercial transports, can't you?

A Well, I am not sure we ever got to that point with Northrop. I would be hard put even today to say Northrop had no potential as a commercial manufacturer of aircraft. I do not recall having worked with Northrop for a number [12949] of years in this area, nor do I recall Northrop indicating any interest in the commercial production of transport aircraft, or any serious interest, since the days of the tri-motor, at least to me.

Q Have you heard of Northrop offering or soliciting the business of any commercial airline in the United States for the purpose of interesting them in buying some commercial transports from them?

A I don't recall anything since the tri-motor, Mr. Davis.

Q The tri-motor went out of existence approximately when?

A Well, it went out of existence as a production article in the time period I just mentioned. I can't recall exactly when this was.

Q 1945 to—

Mr. Williams: He said 1946.

Mr. Davis: 1946, he said, as I recall it, is when—

Mr. Williams: The development of the Northrop tri-motor sometime in 1946.

A I understand your question. I am taking the step that I think you have in mind. I don't know specifically when it was withdrawn from production.

[12950] Q But it ceased to be, as a practical matter, it ceased to be available to commercial lines in the United States sometime shortly after 1946?

A As I recall, if this will help, the quantity that Northrop produced were produced more or less in one batch. It was not a long intermittent production, where they built two or three now, three or four a year from now, and two or three a year later. I think, whatever the number was, 12, 15, 18, whatever, I seem to recall that these were built more or less as a batch. I couldn't testify to that. That is only my recollection of a long time ago.

Q I understand that.

A What I mean by not testifying, I can't state it as a fact, but it is my recollection.

Q I understand that. How do you identify this three-motor aircraft that Northrop built in the quantities of approximately what you have mentioned?

A Identify it as the Northrop tri-motor.

Q Any airline put them into service, do you know?

A Not that I can recall. I don't recall, though, what happened to these airplanes that were produced.

Q You also identified Republic. Can you, along the same lines, describe what happened to Republic as a poten-

tial major manufacturer of commercial transports for [12951] the airline industry of the United States?

A Well, Northrop—excuse me—Republic have certainly had varying degrees of potential to build commercial airplanes through the years. They are a sizeable manufacturer. I suppose this fluctuated depending on their military business, their management desires, and the like.

When you say what became of it, I don't know whether it totally went away or not. There has been, certainly, no recent offerings from Republic that I am aware of.

Q Will you describe or identify the period during which Republic was offering to manufacture commercial transports for the airline industry?

A Well, Republic offered, and tried hard to sell to numbers of airlines, a four-engine high-speed commercial transport called the Rainbow. This was, in essence, a design derived from a similar airplane built for the military under military contract.

As I recall it, Republic's management wanted to diversify in the sense that they wanted to get into both commercial and military production following the war period.

As I recall it, a number of these airplanes were ordered by Pan American and by American Airlines.

TWA did not order any, and as far as I know, Hughes [12952] did not order any.

Q When was this taking place, this Rainbow aircraft?

A I think, again, 1945-46. Whether the early review work started in 1944, I am just not certain.

Q Did Republic in fact deliver Rainbow aircraft to Pan American Airlines?

A No.

Q What happened to those orders?

A Well, as I recall it, Mr. Davis, they were cancelled.

Q I am trying to find out what happened to Republic's efforts, if any, to enter the field of manufacturing commer-

cial transports for the airline industry. You left me with orders being placed, and then you stopped.

A I said the orders were cancelled, as I recall it.

Q Because I extracted that from you. I am trying to get you to describe for me, based upon your knowledge and experience, to describe the period during which Republic was making any effort that you know of to offer commercial transports to the airline industry and to what extent those efforts materialized and how long Republic remained a realistic potential supplier of commercial transports.

A After the orders were cancelled by Pan American and American Airlines, my recollection is that Republic was so [12953] busy licking its wounds that they made no more commercial offerings.

Q And this cancellation by Pan American and American took place, as you understand it, approximately around 1946, a year one way or the other?

A Possibly. It wouldn't be the other. It would be a subsequent period.

Q 1947, you mean?

A Well, if my assumption of 1945 and 1946, which I have to qualify, because I can't be that specific, unfortunately is correct, then it would be 1945 or 1946. I am not sure. By the time it was cancelled Republic had airplanes going down, in various stages of construction, the production line.

Q And thereafter it made no further offerings to the industry?

A I don't recall any at the moment.

Mr. Davis: Shall we take the morning recess?

The Special Master: We will take a short recess.

(Whereupon, a short recess was taken.)

[12954] By Mr. Davis:

Q Mr. Rummel, will you now describe what happened to North American as a potential manufacturer of commer-

cial transports for the airline industry in the United States?

A You are referring now to the total post-war period, up to the present time?

Q Yes. I am interested in discovering to what extent and for what period post-World War II North American was a manufacturer who offered to the airline industry the possibility of obtaining commercial transports manufactured by them, or by it.

In other words, Mr. Rummel, I am asking for the same kind of information that you finished giving me with respect to Curtiss-Wright, Northrop and Republic.

Mr. Williams: I think he understands. He was just thinking.

The Witness: I was taking a second to run through it mentally before I answer it.

Mr. Davis: He was asking me about the period.

Q Didn't you cover the same period with respect to the others, the post war period to date?

A Pretty much. I do recall now that we had Fairchild making offerings now and then in that period.

Q We will add Fairchild to the list. The point that [12955] is confusing me, Mr. Rummel, is your apparent lack of clarity as to the period we were covering when you testified with respect to Curtiss-Wright, Northrop and Republic. I want to be quite clear now as to whether or not you described their "availability" for the period from World War II to date.

Will you please answer that preliminary question first?

A I gave you my best recollection on that.

Q Thank you. Now would you do the same thing with respect to North American?

A I would, I think, categorize North American as a potential supplier, but to varying degrees, through this

period. At one time I recall meeting with Jack Franklin and possibly some others, with Dutch Kittleberger, and briefly Lee Atwood, back in the very early jet development days, which would put it very likely between 1946 and 1948, but I am not certain.

At that time North American expressed an interest, and I would call it an idea rather than a plan, for entering the commercial business.

I recall having intermittent contacts with North American through this period. I at the moment don't recall their specific outlines or plans, if you like, or exploratory—or the nature of the exploratory discussions that they [12956] had. Maybe I will recall this more fully. I don't at the moment.

However, in fairly recent years North American has evidenced interest in developing a supersonic transport, certainly far from the offering stage. I get the impression that it might be, broadly speaking, similar to the very early subsonic jet transport development or pre-development discussions that I referred to yesterday.

We have had discusions with North American reviewing, to the extent that security limits permit, the B-70, and their ideas on what they may have had in mind with respect to a commercial supersonic transport from time to time during the last year and a half or thereabouts.

Q Are you finished?

A That's all that comes to mind, Mr. Davis.

Q You said that in the period from 1946 to 1948 you recall having discussed or you recall that TWA, through Mr. Franklin, yourself, possibly others, had discussions with North American with respect to what you described as an idea rather than a plan.

May I inquire what happened, what were you discussing and what happened to that idea?

A It wasn't our idea, and the meeting wasn't arranged

certainly by me, and I am quite sure it was not arranged by [12957] Mr. Franklin.

Q Who arranged it?

A I can't be certain. I recall the impression I had at the time, which was that it was arranged through Jack Frye.

This meeting essentially was a round table discussion, if you like, of what North American was doing in various phases of interest in the technical field, and what they would have in mind for the future, particularly with respect to whether or not they might wish to enter the commercial field.

The idea I refer to is simply a design idea that, as I recall it now, and I am a little vague, but I believe Dutch Kittleberger expressed. I can't recall at the moment the extent to which it might have reflected North American's prior effort, or whether it was something that he had in mind personally.

I did get the impression that it was simply a talking session, an idea type thing, as I put it, rather than a specific plan of action that they then had planned to pursue.

Q Were you discussing a jet aircraft with them at that time, or were you discussing—

A We—I can't be sure. The thing on which this idea I mentioned was based was a jet aircraft, yes.

Q And in fact North American has never developed or [12958] manufactured a commercial transport for the airline industry to date, is that correct?

A I would so state. I am sure they would have been happy to sell their very small jet transport to the airlines, but I don't think it was produced with that in mind particularly.

Q Was that a discussion again of the possibility of converting some military aircraft which they then had under production or scheduled, converting—

A I don't recall any such discussions with North American.

Q So now those that we have identified as potentials, namely, Curtiss-Wright, Northrop, Republic and North American none of them in fact produced any commercial transport for the airline industry that you know of, with the possible exception of those three-motor jobs of Northrop that you don't know what happened to?

A No, that is not correct. Curtiss produced airplanes indirectly for the industry. They produced numbers of C-46s during the war, a number of which were converted for airline use, and used by the airlines following the war.

Q What is the C-46, how did it become known when converted to a commercial transport, as a C-46?

A As far as I know, it was always called and still is [12959] called the C-46. The C-46, of course, is a military definition or nomenclature for that specific cargo airplane.

Q Which airlines acquired the C-46s for use on their routes?

A I am a little vague on this. As I recall it, Eastern Airlines had a few, I think Pan-Am had a few, and a number of non-scheduled operators operated with C-46s.

Q Are you referring now to an actual conversion of a military aircraft, or are you talking about the manufacture of an aircraft by Curtiss-Wright for the airline industry?

A No, my earlier testimony related to your second point there. As I recall it, Curtiss did not produce a post-war airplane in quantity. They may have produced one or two or they may not. I am not clear on that. They did produce a number of C-46s, a number of which were converted for use by certain airlines.

Q We have added to that list Fairchild. Would you, for the same period, describe or identify the same kind of information that you have given us with respect to these others?

A The thing that comes to mind mostly is Fairchild's

production of the Fokker high wing twin engine airplane that was designated by Fairchild as the F-27.

I have the impression that Fairchild made certain [12960] changes over the Fokker design, but that it was essentially a Fokker airplane.

In any event, we received brochures, plans, I think letter proposals, from Fairchild, particularly during the time that Jimmie Pfieffer was there.

Q Can you identify that period by years?

A Not precisely, Mr. Davis, I am afraid. Probably 1955 through 1957, or thereabouts.

Q 1955 through 1957?

A Or thereabouts. As an approximate number, please. I am not certain.

Q That was a jet aircraft?

A No, it was a turbo-propeller driven airplane.

Q Did any airline acquire those?

A Yes.

Q What happened to that program?

A It was placed in production, and I think still is. Numbers of smaller airlines purchased it. It was a fairly small airplane.

Q How small?

A Well, if memory serves right, 28 to 32 passengers, but I am not certain on this. 28 to 32 is the number that comes to mind, but I am really not sure.

Q Can you identify the airline or airlines who acquired [12961] and used this type of aircraft?

A No. It was the smaller airlines that we generally call feeder airlines.

Q Did you or TWA give any serious consideration to that aircraft, that type of aircraft?

A Well, as far as I can recall, this is one TWA looked at. I don't recall the project involving more than TWA.

We concluded finally that the airplane, as I recall it now,

was just a little small, and that we had so many major equipment problems that we would put the more major problems ahead, if we could, of airplanes in this category, in the order of priority of attempting to solve equipment problems.

Q Is that your complete answer?

A I am a little bothered because I am quite certain that through this same period Fairchild and we were in contact, but I don't recall any specific instances, or what the occasion might have been. So I guess that would be the complete answer, at least to the extent I can recall it at the moment.

Q I gather from your answer that a decision was made not to pursue an interest in this F-27.

A No, I don't think a decision was made. I think that we simply continued to talk to Fairchild on occasion, de- [12962] voting our time in areas where it appeared more appropriate to devote it. We simply didn't push in that area, and I don't recall pushing it to any stage of making a formal decision, if you like.

Q I take it, at least from my notes, that we have exhausted the identification of U. S. manufacturers or potential manufacturers of commercial transports for the airline industry.

A Mr. Davis, we may have received letters or a visit from Chase representatives, but I am not really positive of that. I know that we knew what they were building.

Q From who?

A The name I seem to recall was Chase. I think there was a company that built a small cargo transport called Chase. But this is certainly vague and indefinite in my mind at the moment. It is possible that we did more than what I said, but that's all I seem to recall now.

Q You understand that my question is not limited merely to those in whom TWA showed an interest. I was

asking you, based upon your general experience, and the fact that it was part of your duties and functions at TWA to keep abreast of developments in the field, if you have identified all major manufacturers who either did or could, in the sense of having the facilities and the possible interest in the manufac- [12963] ture of commercial transports for the airline industry. You have identified them all, have you not?

A Not by that definition, no.

[12964] Q Will you describe in your own words what you have identified?

A Well, there were manufacturers that were building military airplanes only that just simply had zero interest never expressed any interest, we thought never would express any interest, in building commercial transports. I thought I was answering the question with respect to commercial transport type airplanes.

Q That's right. In my question I meant to include the words "commercial transports for the airline industry."

A Yes, but some of these manufacturers that built military airplanes only, with respect to potential as defined by plant facility size and technical knowhow, for example, certainly could have, had they so elected, become interested in the commercial field, and probably could have produced a commercial airplane.

McDonnell, for example, is one that in recent years has indicated interest in getting into the commercial field. Whether or not — just what the potential is here would be highly speculative.

Q I realize when I referred to facilities I may have confused you. I meant a double standard.

I meant the identification of those who had both facilities and expressed a desire or interest in the [12965] manufacturer of commercial transports for the airline industry.

A One I failed to mention would be McDonnell. They have shown recent interest in building commercial airplanes.

Q How recent is that development?

A Oh, during the last couple of years on and off, I would say.

Q Is that also in the so-called supersonic transport?

A No.

Q Let us describe that, let us add McDonnell.

Will you now give us the same type of information with respect to McDonnell that you gave us with respect to the others?

A McDonnell seemed interested in producing a small jet transport. It came forward with extremely brief specification statements, preview drawings, and I would say abbreviated predictions, in a certain sense, of what the operating cost of the vehicle might be, when it might be produced, assuming they decided to produce it by a certain time, and that sort of thing.

My understanding was they were trying to find out whether what they were talking about would have any interest or would fill a market need or an economic need that we might have.

[12966] I am not sure what the current status of that is.

Q How small a jet was involved there; something comparable to the F-27?

A The F-27 had a turbine engine. I wouldn't really call it a jet. When I indicated McDonnell was considering a jet, it was a pure jet, without propellers, and it would be in the same general category, if one considers the various planes they had.

I hope I haven't misled you. They had more than one such plan. They were trying to decide, during a period of time, what they should build, if anything.

But it would be in the same general category, I think,

of the BAC-1H, or maybe a little smaller, or let's say on the order of the small Douglas transport, or a little smaller.

I don't recall specifically the size.

Q Can you describe a little more fully what you mean by the BAC-111 or the Douglas transport?

A The BAC-111 is a twin-engine jet transport being built by the British Aircraft Corporation, and now currently under development. It's been ordered, I think, by Braniff Airways, and I think one other, maybe Mohawk, if I recall correctly.

The small Douglas transport is a — is also a [12967] twin-engine transport, somewhat bigger than the BAC-111, and as far as I know, Douglas has not arrived at a decision yet to complete engineering and place it in production. It is, I think, giving current consideration to this.

I must say, with respect to McDonnell, that my impression is they don't currently plan to go ahead, but I certainly couldn't state that as a fact, but only as a fact that that is my impression.

Q Have we now completed the identification of the U. S. manufacturers in the category that we defined?

A I think we completed identification as nearly as I can recall.

In the last few minutes Chase came to mind, and some others, and it may be that some others will occur to me.

Q If it does, would you mind volunteering the information?

A No, I will certainly keep this in mind, to the extent I can, and try to do so.

Obviously we have not, I assume we don't wish to yet, talk about any detail about Douglas, Lockheed, Convair or Boeing.

Q We will cover that a little later.

Now I would like you to similarly identify foreign [12968] manufacturers, and again I am interested in the

period from World War II, that period, to date, so that we can have a complete picture, a worldwide picture of what I describe as available sources of commercial transport aircraft.

A I will have to exclude the Iron Curtain countries. I have no idea, really, what is going on there.

Q We will exclude the Iron Curtain countries.

A AVRO Canada, Canadair — Mr. Davis, I am putting these all in one category now —

Mr. Williams: AVRO is Canadair?

The Witness: No. I say AVRO Canada and Canadair.

A (Continuing)—DeHavilland—that is in England—Vickers in England, Handley Page, also in England, Bristol in England, Short-Harlan—

Q May I suggest Aviation Sud?

Mr. Williams: Are we in France already?

A I was thinking of more in England. I don't seem to think of any more in England amongst the air frame manufacturers. We have not yet talked about engines.

In France, Sud Aviation—well, I have a problem, I guess, at this point, in trying to answer your question. I hate to bring the word "availability" up, but I am [12969] answering this particular question I think in context of what might be broadly categorized as probable acceptance, if you like, or an area of interest, as I have understood it, on the part of U. S. manufacturers in foreign products.

In terms of true potential to build airplanes, there are other manufacturers who in fact did build airplanes, but to my knowledge, not for the U. S. carriers.

So the question is is this in the general context of for U. S. carrier usage.

Q Let us first limit ourselves to those who developed or disclosed an interest of manufacturing commercial transports for U. S. carriers, and then after we finish that identification we will try and complete it.

A All right. My real point is some additional manufacturers than those I have mentioned probably could have produced transport aircraft had it been their lot to—had there been sufficient interest, and had it appeared worth their while to do so. But they have not, as far as I know, for U. S. users.

Q Before we go into the identification of those, have you completed the identification of foreign manufacturers for U. S. usage?

[12970] A I am not certain, Mr. Davis, whether Fairchild produced or did not produce a number of F-27 types for import into the States. You recall, I said this airplane, this basic type airplane, was built by Fairchild, but I believe Fairchild had engineered it or re-engineered it to some extent.

It is quite possible that Fairchild might have built components that were assembled here at Fairchild's factory. It is quite possible, and I don't specifically recall, but it is quite possible they even built whole airplanes that were delivered and used by some U. S. carriers.

I can't be certain.

Q With that explanation, have we now completed the identification of foreign manufacturers?

A As I have understood your question, yes.

Q You apparently have in mind a number of additional ones whom you describe as those who could have produced. Will you or can you identify those?

The Special Master: I wonder, before going into that, Mr. Davis, if there might be an indication, an inquiry, at least, as to whether it could have any relevancy to this whole problem.

Mr. Davis: The lawsuit?

[12971] The Special Master: Yes.

Mr. Davis: Certainly.

Mr. Williams: I have been wondering about that. I have been very tolerant—

The Special Master: I am thinking about these particular ones that never manufactured for American usage or even contemplated—

Mr. Davis: Mr. Special Master, my problem in this area is I don't know just exactly the nature of the alleged violation of the antitrust laws with which we are charged, and conceivably a contention could be inherent in the allegations of the complaint that we attempted to stifle those who could have produced.

That is part of the problem of having what I refer to as notice pleading without a specification in the allegations of the complaint identifying with greater particularity the conduct which the plaintiff is complaining about.

Mr. Williams: It seems to me that is a very inadequate argument. To answer this—

Mr. Davis: If it can be—

Mr. Williams: Just a moment.

Mr. Davis: May I finish?

[12972] Mr. Williams: You had finished.

Mr. Davis: I am sorry, I had not.

If it can be stipulated by counsel for the plaintiff that whatever the Hughes Tool Company, Mr. Holliday or Mr. Hughes is charged with does not involve conduct or activity relating to this additional category, I will not pursue it.

Mr. Williams: Are you through now?

Mr. Davis: Yes, I am.

Mr. Williams: I think that is a very inadequate answer to the Special Master's request for information as to how this is relevant.

I don't think the development of individual types of airplanes by airplane manufacturers in this country and abroad has any relevance to the lawsuit at all.

I have been very patient and very tolerant because I realize that we cannot object, nor have I objected so far, on the grounds of relevancy or competency, but only as to form.

I still think that this is a grievous waste of time.

The Special Master: In light of the statement by Mr. Williams, which I take is on behalf of his [12973] client, TWA, I will construe that there is no issue in this lawsuit as to any interference with regard to procurement of airplanes from manufacturers who did not offer or present airplanes for the use or purchase by American airlines.

Mr. Davis: Thank you, sir.

By Mr. Davis:

Q Now let's take up AVRO Canada. What I would like to have you do is substantially the same thing that you did before with respect to the United States manufacturers, identifying the period during which they were offering or in a position to solicit or were soliciting business from the airline industry, giving me as well as you can the period when they were in that position or active in that regard, and the type of aircraft that they were offering.

Mr. Williams: May I have that question, please?

The Special Master: You may.

(The question was read.)

A AVRO Canada produced a prototype four-engine jet transport and offered it to the U. S. airlines, and possibly foreign airlines. This was very, very early insofar as jet

developments go. As I recall it, it flew [12974] a demonstration shortly before Korea, as I recall it, which would have been what, 1950, 1951, 1952?

Q In that area.

A I apologize for having difficulty with these dates, Mr. Davis, but this goes back quite a while.

This airplane, as I recall it, was in fact sold to National Airlines, I don't recall the number of them, it was definitely slated for production, and I had been working with AVRO representatives to a very limited extent. Certainly AVRO had provided technical information describing the airplane, and we had had a few meetings.

[12975] Q This was in the period subsequent to 1950 to date?

A This is the period I mentioned.

Q I am trying to understand if this was limited to the period 1950 to 1952, or if you are talking about—

Mr. Williams: A more recent—

A I knew the airplane was being developed and built before it flew, as did just about everyone else in the business.

I don't remember the detail stages here, but I wound up on the West Coast inspecting this airplane with and flying in it with Mr. Hughes.

Q Do you recall about when that was?

A Not precisely, no.

Q The period, as best you can.

A I can recall where it was. Well, it was in the period I am talking about, but I somehow draw a blank on the year right now.

Flew it out of the Hughes Aircraft Airport, if that is the right name, and it is an airport, don't misunderstand me, I don't know if it is the right name, and shot a landing

or two somewhere in the San Fernando Valley, I think it was Van Nuys, and so on.

Q With respect to dates and things like that, Mr. Rummel, to ease your mind, give me what you think is the [12976] most accurate date you can. I will take it always subject to correction afterwards if you find that you were—

A Well, my recollection is vague here. I would judge that it was shortly before the Korean conflict. The reason I say that is that it is my recollection that as an aftermath, or as part of the effort that went into the Korean conflict, there was an upsurgence of military business, and this, fairly directly, as I recall, caused the airplane not to be produced.

Q I believe you said that some were sold to National Airlines.

A Some were ordered by National. None were delivered.

Q You mean the Korean conflict interrupted the plans of the production by AVRO of this type of aircraft?

A Well, that was the impression that I had. Now, whether it was strictly the Korean conflict, or associated political conditions, or whether coincidently it was the Korean conflict, I couldn't say. But the impression at the time that I had was that it certainly bore directly on the program.

As I say, the airplane was being built in Canada, and whether the military orders that the Canadian companies received were as a direct result of Korea, or coincidental with it, I couldn't really say definitely at this time, but [12977] I do recall the relative timing here.

Q In any event, is it fair to say that AVRO withdrew from that activity of offering that jet aircraft to U. S. airlines?

A That particular aircraft, as far as I can recall now, was not offered after it was withdrawn.

Q And subsequently did AVRO offer any other type of aircraft to the U. S. airlines?

A Well, as far as I know, AVRO did not offer anything to the U. S. airlines at large, although they might have without my knowledge, obviously.

AVRO worked with me and with Mr. Hughes over a fairly extended period of time toward the development of a transport airplane. This was subsequent to the small four engine jet period that I just mentioned.

As I recall it, this was 1954, 1955, and I think into 1956. I am not saying that we worked continuously. There were a number of meetings, and AVRO from time to time had produced plans and information for review.

I might say too, Mr. Davis, this was one of those projects which was highly confidential and extremely restricted in TWA as to the numbers of people that knew about it or had anything to do with it.

Q Was there any particular reason for that secrecy or restriction?

[12978] A Well, first, it was Mr. Hughes' desire. Secondly, it was my understanding that we were trying to explore possibilities toward developing an airplane better than the competition could develop, and the last thing we wanted at that stage was to have the story out.

Q Then what happened to this subsequent effort by AVRO to develop a suitable commercial jet transport?

A As I understand it, you are asking what the end point of all this was?

Q Yes.

A Well, the end point was it wasn't produced.

Q It was not produced?

A No.

Q When you say "not produced," you mean AVRO never in fact produced any commercial jet transport, is that correct?

A We didn't contract for them, or Hughes didn't contract for them.

Q I understand that, but my question is whether or not any other airline contracted for them or—

A No. They weren't produced. As far as I know, there were no contracts for them, and as far as I know, and I certainly can speak only from what I know myself here—

Q I understand.

[12979] A (Continuing)—this was such a secret venture, let me say I would be surprised if AVRO talked to other airlines. Now, this doesn't go to say that they didn't, or that they might not have. Perhaps there was other understandings I didn't know about.

Q The next one you mentioned is Canadair.

A Yes.

Q Will you give me that same type of information with respect to Canadair?

A I am afraid I am just a little vague here. The main thrust, as I recall, was Canadair's redevelopment of the Bristol Britannia.

Q For the record, will you identify what you mean by that, and don't forget the period of time.

A The Britannia was developed by Bristol over a fairly extended period of time.

I think, frankly guessing a little now, as I recall it, the Britannia started emerging as a production article in 1956, although I think airplanes had been built and flown before then, probably 1955, and possibly as early as 1954. It was an extended production and development and redevelopment period at Bristol. They caught the backwash of the Comet.

This was a large four-engine turbopropeller driven [12980] aircraft powered by Bristol engines. My recollection is that Canadair redeveloped the airplane, and produced numbers of them for the Canadian Government, I believe for use as cargo or troop transports.

This basic type was subsequently further developed into what is now known as the CL-44, the swing tail cargo transport that is being flown by a number of U. S. cargo lines.

I recall to some extent a meeting at Las Vegas with some Canadiar people, I think Peter Redpath and—gee, I can't think of his first name now—Able—he used to be at Martin—arranged by Mr. Hughes. As I recall it, I had flown up from Los Angeles for this meeting.

I don't recall the meeting being particularly eventful, and I don't recall precisely what we talked about, but I do recall the occasion of the meeting.

Canadair from time to time would apprise us of what it was doing with the redeveloped Britannia. They attempted to interest us in possibilities of using this type, either complementing Bristol's production—we were also talking to Bristol—or on striking out on their own with us.

In recent years Canadair's primary effort has been to interest TWA in the cargo variant that I mentioned, the [12981] CL-44.

Q Did any commercial airline other than these cargo lines acquire this aircraft manufactured by Canadair, was Canadair successful in selling or obtaining orders from what I call commercial airlines, excluding these cargo lines?

A I don't recall any airlines having purchased transports from Canadair other than the CL-44.

Incidentally, I told you I would tell you if things occurred to me. This flashed across my mind, that DeHavilland Canada has built airplanes, but they are mostly smaller airplanes that wouldn't be of interest to airlines.

They might be of interest, for example, to bush operators or bush airlines, far north and South America, maybe, things like this.

Q We can exclude those.

A I mentioned it only because I said I would if these things occurred to me.

Q This CL-44 is and was a turbojet, it was not a pure jet?

A No, sir. It's a turboprop. The CL-44 is powered with Rolls Royce type engines.

Q A type comparable to the Electra or the Viscount, that kind of an aircraft?

[12982] A Same type power plant, yes. I don't know that this needs elaborating. The specific power plants were different but they were all turboprops in the ships you mentioned.

Q The period during which these considerations or discussions were going on was in the 1956 period until when, or can you bracket for me the period during which these considerations were being given to—

A Broadly speaking, you are asking the time period concerning the general Canadair situation that I just described, is that correct, or about the CL-44?

Q Well, I am referring to the period during which Canadair was seeking to interest TWA or any other airline, so far as you know, in a commercial transport for use by commercial airlines other than these cargo lines. I am not interested in the cargo lines.

TWA I know carries cargo, but perhaps for the record I ought to ask you now to identify or define what you mean by a cargo line as distinguished from other commercial airlines.

A I was referring, in this instance, to airlines whose primary business is carrying cargo. I might add that TWA is a cargo airline as well as a passenger airline.

Q Yes, but American and others carry cargo also, do they not?

[12983] A Yes, sir. These are all cargo airplanes, the CL-44, although it is not inconceivable that they could be converted into passenger use.

Q My question was to bracket the period of time dur-

ing which Canadair was making an effort to interest U. S. commercial airlines in its product or potential product.

A I don't really know when they talked to other airlines. I am assuming that they probably did, but I don't know.

Q The period, then, during which they were talking to TWA.

A Essentially, from the time of the Las Vegas meeting on, although I do think that prior to then there probably had been a few meetings and contacts wherein they advised us what they were doing. At least, it was general knowledge.

Q You have not identified with a date, as I recall it, the Las Vegas meeting.

A No, I don't recall the specific date.

Q Without a specific date, can you give me the year at least?

A Well, I will try.

Q Subject to correction, if you don't think that your memory is likely to be accurate enough for this purpose.

A The trouble is I don't know whether it is accurate [12984] or not in this particular respect. I can generally bracket the time.

Q Would you do that, then, generally bracket the time?

A Sure, to the extent that I can.

Q Please.

A Just give me a minute to reflect. I would believe it to be during 1953 or 1954.

Q Until?

A We are still talking to them.

* * *

[12985]

* * *

Q Mr. Rummel, I believe we had about completed your description of the extent to which Canadair was a factor in the availability of aircraft to the commercial airlines of the

United States, isn't that correct, you had finished your description of that aspect?

A I believe so.

Q Before I leave Canadair, however, during that period which you have identified was Canadair a subsidiary of General Dynamics, another division comparable to Convair?

A I believe they were during a substantial part of that period, at least. I am not certain as to the date of that affiliation.

Q The next manufacturer which you have identified, according to my notes, at least, is DeHavilland of England.

Will you give us the same type of information with respect to that manufacturer?

A My first direct contacts with DeHavilland were—began I think in 1952 or 1953. DeHavilland were developing the Comet airliner, which was a four-engine jet. In fact, it [12986] was the first long range high speed jet that was produced, and it was viewed as a highly advanced airplane. The AVRO I mentioned earlier was a small low speed, relatively speaking, jet, not in this category.

I visited the DeHavilland factory, looked at the production line, which was then primarily empty, and looked at a Comet. I may have that 1952 year wrong. In any event, to pin it down, if it requires pinning down, it was shortly after the first Comet had flown, maybe a few months, that I was there.

DeHavilland had kept I think all airlines and all prospective customers, at least, this is my impression, they certainly did us, advised generally of the progress they were making, the kind of airplane they were producing, and clearly England wanted to use it as a vehicle to break into the world air transport market.

There were a number of subsequent meetings with DeHavilland. As I recall it, we fairly seriously considered

the procurement of the Comet on two occasions. I am not clear as to the exact timing here.

I discussed the Comet with Mr. Hughes numbers of times by telephone, and obtained delivery information and that sort of thing, which I also made available to TWA.

As I recall it, at one point our board of directors [12987] met in London and had a short ride in the Comet, although I had no part of making that particular arrangement, didn't know about it until afterward. I viewed it as—I assume it was a courtesy demonstration of some sort.

Pan American in fact bought or committed to buy a number of Comets. I recommended against the Comet for a number of technical reasons. This was before the Comet had run into serious technical difficulties. Mr. Hughes seemed to agree with this view. In any event, no commitments were made either by Hughes or by TWA.

After the series of crashes and the resulting redevelopment of the Comet, approximately during the time when this was being implemented, the line was being re-established, again, I am not certain precisely the year, but I would suspect that it would be in 1955, I think, 4 or 5, maybe 1955, DeHavilland was demonstrating I believe a Comet somewhere in Canada. In any event, there was a group of DeHavilland people in Canada flying some airplane, and as I recall it, it was a Comet, but I am not certain.

In a phone conversation with Mr. Hughes, I remember I was home at the time, in Kansas City, he made—this is probably why I recall it this clearly—what was an unusual and challenging but I think unimportant, in a sense, request, he asked that I get ahold of—contact a certain individual [12988] I know, whose name is Frank Lloyd, at DeHavilland, that I was to do this without letting the operator know at the other end who I was, where I was calling from, I was not to contact anyone else before speaking to him—there were some limitations that bring this back to

mind. I don't think it is important to this testimony, but I did succeed in getting hold of him on the third try, as I recall. I had no idea when I started where he was, except that he was in Canada.

In any event, the Hughes' request was to contact Frank Lloyd, and determine what they could really do for us with respect to early airplane deliveries, get their thoughts on airplane price, and then discuss it with him.

He suggested—

Q "He" being Mr. Hughes?

A (Continuing)—Mr. Hughes suggested that Lloyd and I get together right away, but that no one in TWA be permitted to know a thing about this.

I called Lloyd, as I say, Frank, and got ahold of him, and arranged to meet him in Chicago. In fact, I had the hotel room set up through the West Coast Hughes office to maintain security, and I met Lloyd—let me say I got ahold of him late at night—I met him the next evening in Chicago, and as I recall it, it was the Blackstone Hotel.

[12989] After discussing the situation with him, after he went through a series of documents and things on deliveries and whatnot, I got Mr. Hughes on the phone as he had directed that I do. I might say that it was not normally possible to simply call Mr. Hughes except by his agreement that he should be called or by some prior arrangement. But I got him right away, and talked to him very, very briefly, whereupon he discussed this situation with Mr. Lloyd.

As I recall it, I am just a little bit vague here, but the net result was that the deliveries offered, I am not sure of the position we took on price, but in any event, the deliveries offered weren't good enough to satisfy a seasonal requirement.

I would interject this, Mr. Davis, to recall to you or point out that our business fluctuates seasonally. We like

to, when we can, put airplanes in so that they are efficiently in service coming up with the expanding busy season, rather than, for example, hitting the low season. We hit the low season, in some respects, we don't lose much by waiting until the busy season. This isn't very important, but this was a factor, as I recall it, relating to the deliveries on that.

Q While we are on that, can you describe when the seasons begin and end?

[12990] A It is different in international and domestic. There are really two peaks. Broadly speaking, mid-January on to mid-April would be a fairly low season, it would swing up, June is usually pretty good, July it tends to drop off some, and it peaks up in, oh, September, October, November.

Q From a procurement point of view. You indicated a moment ago that you normally made an effort to obtain deliveries falling at some point so as to—

A From the procurement point of view, and as a generalization—

Q Yes, I understand.

A (Continuing)—deliveries would normally best be made so that we had a going expanding operation with the new type starting with the beginning of the increase in business, which would be in this May, June—April, May, June period. In other words, we would be adding airplanes in that period, up toward the peak.

Q From a procurement point of view you would be interested in a delivery schedule which would begin in April and—

A Well, let me say that that is a factor that is considered. Naturally it must be related to other things, like the fleet posture of the competitors, some of the [12991] things which I think I mentioned Tuesday. But it is certainly a factor, and I think a fairly important one, when you get airplanes in relation to when you can effectively use those airplanes.

To continue—

Q Yes.

A (Continuing)—it became my lot then to see what could be done, working with Frank Lloyd, to improve, if anything could be done, let's say, reasonably, to improve DeHavilland's ability to produce the Comet.

This effort consisted of a number of phone calls from him to me, and one or two from me to him—he was then in England—reporting the progress he was making, and then to go back and talk to his people.

As I recall it, although I couldn't be specific, some improvement was offered in deliveries, and on balance the decision was arrived at that it really wasn't good enough, considering that plus the other factors that we were able to consider, to proceed. As I recall it, this generally was my recommendation, and Mr. Hughes concurred in it, and then the project was dropped. I think I did let Mr. Collings know at least a little bit about what was going on, but to my best knowledge, this was a sort of a Hughes-Rummel-Frank Lloyd party, so to speak.

[12992] I haven't finished with DeHavilland.

Q Finish.

A I don't recall any subsequent, we will say, serious efforts to consider the Comet. One of the significances of the Comet investigation was the relationship of it to the probable development of better jets over here, could we, for example, by getting the Comet, hang on, so to speak, until a really superior plane could be produced here that would lead the competition, or should we forego the Comet and jump on the bandwagon, so to speak, with whatever might be coming along. These were things, among many others, that were generally talked about.

I mean, it just was conversation, speculation, what might happen if this occurred or that, and so on.

Now, I don't recall any big drives on the Comet after the sequence that followed this Chicago meeting, although

DeHavilland people did drop into my office occasionally and let me know how they were doing, what their latest delivery positions might be, and that sort of thing. It certainly is possible that more occurred.

I might say that Pan American did not obtain deliveries of Comets. Its contract, as I recall it, expired.

Q What do you mean by "expired"?

A Well, I am not sure what I mean, except that as I [12993] understand it, as I recall it now, and this may not really be correct, it was of a nature that didn't require formal cancellation. I think it simply ran out, so to speak, but I am not certain.

It may have been that CAB approval of the airplane was required by a certain time, or something like this, that wasn't obtained. I am not really familiar in detail with that. The point is that I had mentioned earlier in this testimony that Pam Am had ordered it. I was trying to simply close the cycle now by saying they had not received airplanes.

Q I was going to ask you that question anyway, Mr. Rummel, and while I am at it, could you tell me whether or not this expiration of the Pan Am order took place before or after the decision by TWA to abandon further efforts to procure the Comet?

A Well, I don't know of any TWA decision. Maybe you didn't mean it that way. As I said, it was between Hughes and myself and Lloyd, and I recommended to Hughes, as I recall it, and there was a full discussion between us, and the net result of it all was that we didn't move.

Q I understand that. My question then is did this Pan Am abandonment of their order take place before or after your recommendation to Mr. Hughes.

[12994] A I am just not sure about that now.

Q But you are clear, or are you clear, that your decision and recommendation was not influenced or predi-

cated by the action taken or lack of action taken by Pan Am?

A Well, we tried to take cognizance of our equipment position as it would be with the airplanes and without the airplanes, as we understood that others would be.

As I recall it now, we had in mind putting the Comet in service in the U. S. rather than overseas. I can't state that as a fact, except that it is what I presently recall, in order to get a jump on the competition, and possibly undercut airplanes like the Electra. At least, we gave consideration to the possibilities of this type, and I am quite sure this was one of them at the time.

Q My question was whether or not your recommendation was influenced by the fact that Pan Am had abandoned its procurement program of Comets, or whether that was a factor at all in the decision which you reached in connection with your recommendation.

A I don't recall, Mr. Davis. I certainly wasn't blind to what Pan Am was doing, as nearly as I could find out what they were doing.

Q In the course of your description of the discussions with DeHavilland you referred to several conversations with [12995] Mr. Hughes, and then you described some of them.

Have you—

A I described one of them, I think. Anyway, excuse me.

Q I thought there was at least one as to how to contact your friend Mr. Lloyd, and one in Chicago—

A Oh, yes, sir.

Q Then presumably there was one when you made your recommendation not to go ahead with the Comet?

A This is right.

Q Is that right?

A Right.

Q. Because what I want you to do now is to give us the full nature of whatever discussions you had with Mr. Hughes relative to DeHavilland. By that I mean at least by describing the subject matter you were discussing in such further detail as you care to give, but I am not trying to turn this into a technical discussion of all the technical aspects of the aircraft.

A. Mr. Hughes always had great interest in the design aspects of airplanes, the power plant installation, for example, structure, he was interested in—greatly in pressurization aspects of the airplane with respect primarily to safety. In fact, he was interested in safety [12996] aspects in almost every aircraft design of the airplanes on which we worked.

One of the areas that I am certain we discussed was the use of material in the Comet, the fact that they used prestretched skin, extremely thin skin. We considered a number of structural factors.

We were—talked about the fact that the engines were buried, built within the wing, the wing surrounded the engines. This introduced questions, such as the likelihood of or the problems of containment of fire if fire should occur, the effect of an explosion at such a vital structural area, not that we predicted explosions, but I mean, these things were discussed.

We discussed performance aspects of the airplane. As I recall, this was of particular interest. Range, payload. We had run some studies on predicting the operating cost of the airplane, and by that I mean the direct operating cost. These were reviewed at one time or the other during this period, probably several times.

[12997] I might interject this, and say that DeHavilland were offering several versions of the Comet. This wasn't one airplane. It was one, a succeeding model, and then one they were thinking of, that kind of thing.

We talked and discussed airplane price, I think we talked about the general ability of a manufacturer like De-Havilland to produce aircraft that would measure up to standards that we were accustomed to, I think we talked about CAB approvals.

It was an effort to evaluate, let's say, and judge the wisdom of proceeding or not proceeding.

Q Then you had discussions about the necessity or desirability of secrecy?

A Yes. This stemmed from Mr. Hughes.

Q I would like you to describe or give us your recollection as to the nature of those discussions.

A Well, it was just a clear statement that I wasn't to talk to anybody, including the people in TWA, about this exercise. I am referring now to the particular sequence just before and then following the Chicago meeting.

The earlier investigations, while there were discussions with Hughes, as I recall them, were not particularly secret.

[12998] Q What I am trying to understand, Mr. Rummel, is what reasons or explanations, if any, were given to you by Mr. Hughes in connection with this secrecy aspect.

A I don't recall any specific explanations, Mr. Davis.

Q What was your understanding—excuse me.

A I don't recall any specific explanations. My understanding was that I wasn't to say anything.

Q What was your understanding as to the reason for the request?

A Well, I don't know, but it wasn't a particularly unusual request, as I recall it.

Q It was not unusual?

A No, to deal quietly, so to speak, in dealing in matters in which Mr. Hughes was interested.

Q Do you recall whether or not Mr. Hughes gave you any reasons or explanations for not discussing these matters internally at TWA?

A No, I don't recall.

Q Who was the chief executive officer of TWA during this period which you have been describing? Mr. Damon died in 1956, did he not?

A That's my recollection.

Q Subject to correction, let's take it—

A Yes. I think Mr. Damon was still there at this [12999] time.

Q During this period—

A Yes, I think so. My immediate boss was John Collings.

Incidentally, when I recited to whom I reported I did fail to recall at one brief interval, it was some five or six months, as I recall it, I reported not directly to Jack Franklin, but to a man named Howard Morgan, who reported to Jack Franklin. That was simply during an interim period.

Q When was that period?

A Oh, some time, I think, during 1945.

Q What I am trying to understand—

A Excuse me. It might have been 1946. I am not certain. It was just before Mr. Morgan left the company.

Q Now I would like to go back to these instructions you received from Mr. Hughes relative to secrecy, more particularly, secrecy involving the internal organization of TWA, and I would like you to tell us your recollection as to how Mr. Hughes made that request and your understanding at the time of the reason or basis for the request, if you had any understanding.

A As I recall it, I don't recall Mr. Hughes explaining to me the reasons for this in this particular instance. [13000] He might have. I don't recall it. Anything beyond that that I would say I think would simply reflect a general assumption on my part as to what might or might—might have led him to say that, and I don't know what led him to say that specifically. He said it, I didn't.

Q At this time I am interested in your understanding or what assumptions you made at the time for the request.

Mr. Williams: What did you want, his understanding or his assumptions?

Mr. Davis: That's right.

Mr. Williams: I am not interested in that. I object to it.

Mr. Davis: You may not be, but I am.

Mr. Williams: I object to the form of the question. Is he asking for his assumptions at the time, as to why Mr. Hughes made the request?

Mr. Davis: Yes, as to the reasons or necessity or desirability—

Mr. Williams: Which is it, reasons, necessity or desirability?

Mr. Davis: I am interested in the understanding that Mr. Rummel had at the time when he received those instructions which he indicated were not unusual.

[13001] Mr. Williams: His understanding from Mr. Hughes? That I don't object to.

Mr. Davis: No, I want to know what this witness' understanding or assumptions were as to the reasons for or necessity or desirability of keeping what was going on with DeHavilland to himself.

The Special Master: I will allow the witness to answer as to his assumptions for the reasons as to the direction of secrecy if it was based on his experience. Was it based upon your experience, these assumptions?

Mr. Barr: May I ask, Mr. Rankin, for a clarification of the question, as to whether the witness is being asked for his reasons or assumptions as to why Mr. Hughes asked for secrecy, or his reasons or as-

sumptions as to why there might have been a need for secrecy, independent of what Mr. Hughes' reasons were, because I think both of those are involved in Mr. Davis' question to him, and I think they ought to be separated out.

The Special Master: I understand the question to be the first that you recited.

Is this based upon your experience with Mr. [13002] Hughes, that you came to some assumptions that you referred to?

The Witness: As to reasons?

The Special Master: Yes.

The Witness: Gee, I don't know that I can be quite that analytical after all this time. I would believe not. I think I would have assumed that it reflected—and it is only an assumption, I don't know what motivated specifically, at least I don't recall having known what motivated Mr. Hughes—but I would think that I would have assumed at that time that it would be the general desire to not tip our hand to our competitors, to wait until—this maybe is an experience factor—to wait until things had progressed somewhat further in the negotiations with the manufacturer, to see whether this was a real possibility or something that appeared attractive, before we went any further internally or before we got people too upset about it.

Mr. Williams: I have no objection to that answer, as long as it is recognized it is a speculation.

The Witness: It is at this point.

Mr. Williams: Pure speculation.

[13003] The Special Master: Let me clarify that, Mr. Rummel. This it not a speculation that you make at this time, as I understand it, it was an assumption

you made at that time, when the request is made of you?

The Witness: This is my recollection as to—

The Special Master: What you thought.

The Witness: I wouldn't call it an understanding, but it would be my recollection of a conclusion that I arrived at at that time. As I say, it was not particularly unusual to be asked not to reveal some particular aspects of things we were discussing with others.

By Mr. Davis:

Q Have you described all the various subjects that you discussed with Mr. Hughes relative to this DeHavilland project?

A I have discussed—mentioned as nearly as I can recall the areas of discussion with Mr. Hughes. The examples I gave would indicate areas to you. There are certainly more specifics by far.

Q I am sure of that. I am interested in knowing whether or not you have now identified all of the areas of discussion.

[13004] A Well, to my best recollection at this time, yes.

Q That is what I mean.

A I might say that we didn't just consider the Comet. In knowing what it meant, we had to compare it with similar applications of other airplanes. I mean, some of these things are so natural that I just haven't brought that out.

Q I don't quite follow what you mean.

A Well, I am talking about instead of just talking about the seat mile cost on the Comet, or plane mile cost, we would say, well, this is what we predict the cost to be on the Comet, and it is X above or below similar figures for the Connie, DC-8, DC-6—not the DC-8; that is a slip of the tongue—the DC-6B, or whatever might be a competitor, or

another type we would operate if we didn't operate the Comet.

So when I referred to cost I simply was identifying area. The detail would, of course, go beyond that.

Q Was the Comet ever accepted by any of the other commercial airlines in the United States?

A I don't know of any that were physically accepted. As I recall it, a number of them were ordered one time by Capitol Airlines, and for some reason or other that I don't recall the order was never consummated.

Q Did there come a time when DeHavilland ceased [13005] to make such offerings to the airline industry?

A Well, I think the answer is no, the Comet is still in production.

Q Is it used by foreign airlines?

A Yes.

Q My notes indicate that the next manufacturer which you identified was—

A I haven't finished with DeHavilland.

Q I am sorry. Please do.

A I understood you earlier to be bridging a great period of time, clear up to the present.

Q Yes.

A DeHavilland gave consideration, over a period of time, to the development of an airplane which could continue in production beyond the period that the Comet would be likely to be in production. In other words, an airplane to fill the gap that might be left by the Comet at such time as it would logically run out, so to speak. It finally decided to build an airplane called the Trident. This is a tri-motor jet airplane, just slightly smaller than the Boeing 727, and preceding it in production by a presently unknown amount, but it probably turned out to be maybe six months.

DeHavilland had been in touch with TWA from [13006] time to time showing what it is they plan to build,

presenting estimates of operating cost, and that sort of thing, attempting to interest us in the procurement of the airplane. This would have been primarily during the last two years or so, although we knew this development about the time it started, because we were—either learned it through industry sources, or possibly DeHavilland, I don't recall which at the moment.

At least three Tridents are flying now, possibly more. It is not certificated. We have not given—well, I would like to rephrase that. We have given consideration to the Trident, but concluded it would be more advantageous to buy a different type, not that it is not a perfectly good airplane.

That's all I presently recall about DeHavilland, in England.

Q Who concluded not to pursue the possibility of procuring this Trident?

A Well, we didn't—not to quibble, we didn't conclude that we shouldn't pursue the possibility of. We concluded in the end that it was more advantageous, considering all factors, there were quite a few special factors, to buy 727s.

Q Who reached that conclusion? Who made the [13007] decision, let me put it that way.

A Well, I would say the decision to buy 727s was made by TWA's board of directors. This was during the fall. September comes to mind, but I am not really sure of the date, of 1961.

Q Was this possibility of the Trident discussed with Mr. Hughes, or this decision to go for the—

A Oh, no, no.

Q I beg your pardon.

A No.

Q So that your prior testimony relating to the area of discussion with Mr. Hughes covered all discussions that you recall having had with Mr. Hughes relating to DeHavil-

land products, whether it be the Comet or any other aircraft?

A I am certain, Mr. Davis, that at the times we were discussing the Convair model 18 and some of the Boeing airplanes, that is, the jets, that reference was made to the Comets, because we wanted an airplane that was considerably better in many ways than it. But I am certain we referred back to it in a number of technical areas. Specifically, it would be hard to pin down right now. But I couldn't say that I have referred to all that I could recall, that is, all references to the Comet.

[13008] Q Now can we proceed with Vickers?

A Certainly, surely.

Q Please do.

A Well, Vickers became of interest with the development of a smallish four-engine turboprop airplane that was called the Viscount. I had followed the Viscount development out of interest. It was originally developed through a joint effort involving BEA, Vickers and Rolls-Royce, and included as part of the development program the installation of two Rolls-Royce turboprop engines and at least one, and maybe two, Dakotas. Dakota was the English designation of the C-47 type. These were flown in passenger service, and all this was of technical interest. When the Viscount itself emerged I flew in the experimental model, which, as I recall it, was called the model 630. I am not absolutely sure, but I think that was it.

The Viscount was reviewed by myself and my staff. Vickers were anxious to penetrate the world market, and particularly the American market. This was a very important thing as far as they and I think most manufacturers were concerned, so they made lots of data available for review.

We were frankly skeptical about the operating [13009] cost characteristics of the airplane, and I recommended on

two different occasions to Mr. Hughes that we not move forward with the Viscount program.

The Viscount was also discussed within TWA, and, as I recall it, this view had the support of the knowledgeable people within TWA. That is, the view that we not proceed.

In the meantime, the Viscount became a well established airplane in Europe, and a very popular airplane. Capitol Airlines purchased a sizable quantity. I am not certain of the sequence. I think they ordered 45, and then that order, I believe, was increased to 60, if I recall correctly, and then it was increased to 75 units.

Christopher Clarkson, who is the U. S. representative for Vickers, did telephone me while I was at home in Kansas City, and advised that Capitol was forced to cancel, and was in the act of cancelling, these last 15 airplanes, and in view of our earlier discussions on the Viscount, and TWA's general equipment situation which he viewed to be that which represented generally a lack of equipment, would we be interested, and would I take this up with Mr. Hughes.

I said "Well, given the opportunity, I will be [13010] happy to mention it to Mr. Hughes," or words to that effect. I don't recall the precise words, I am not trying to be that precise, but I concurred that I would try to advise.

I can't recall whether I left word through the Hughes office or not, but I do recall mentioning this to Mr. Hughes, and he indicated interest in having the matter pursued further with respect to seeing what really could be worked out.

He had great technical interest in the airplane, and we did a number of things then. One thing was to send a small team, I don't remember how many people, I would guess maybe five or six, maybe four to six, send a small team headed by a fellow from my department to go to two

airlines to review the experiences that these airlines had had with the Viscount type.

[13011] Now, these airlines were Trans-Canada and Capitol Airlines, who by that time had already operated their early Viscounts for quite a while. As I recall it, both airlines were reported to be extremely helpful in making maintenance information and operating information available to this team, who then reported to several people in TWA their findings, one of them being me.

We also conducted some special flight tests at Mr. Hughes' specific request on the Viscount at or in and about Montreal. This was a TCA airplane that TCA quite graciously made available for the purpose.

These particular tests had to do primarily with trying to establish the degree of purity of the air in the cockpit and in the cabin. We contacted some laboratory, I couldn't, I guess, begin to name it right now, located in Canada, took air bottles on board, took various other instrumentations that would indicate various things, carbon dioxide content and the like, and conducted these tests under various flight regimes, and then had the lab analyze the data and report on the results. The results were given to me, and I discussed them in some detail with Mr. Hughes. We were quite satisfied, I might say, with the airplane in this respect, once these tests were completed.

Q He was quite satisfied?

[13012] A We both were, I think. I had the impression that he was. I was.

Mr. Hughes also requested that I see whether or not or let's say determine whether or not, if I could, TCA would be willing to give up a delivery position on the Viscounts that were then being produced for TCA at Weybridge, Weybridge being the Vickers factory in England. My understanding was that this delivery position, if TCA could make it available, would be for Mr. Hughes and not for

TWA. I was glad to do this. I called Gordon McGregor a number of times, and in the end he agreed, after talking to Sir George Edwards, and getting his concurrence, to make one of TCA's positions available to Mr. Hughes.

This was all being done at a time that we were seriously considering the Viscount for TWA's use. By "we" I mean Hughes and myself, and then the people that we had doing these things.

The negotiation became extended.

Q Became what?

A Extended. That is, it covered a fairly extensive period of time. This was during the time that Carter Burgess was president of TWA. I don't recall if this started just before Mr. Burgess became president, or just afterward, but he was there during, I think, the larger part [13013] of those negotiations.

It was clear that the Viscount could be improved with respect to payload range, for example, and that it should be, and part of the negotiation consisted in trying to sell Vickers on items of this type, although the Capitol airplanes had been committed for some time, and the whole configuration of the airplane in detail was circumscribed and limited by the construction progress that had been made and was continuing to be made on these particular 15 airplanes. But nonetheless, Vickers did agree to do some of these things and make these improvements. These were reported to Mr. Hughes from time to time.

The contract development — I might say Mr. Hughes asked that I coordinate and handle, be responsible for the development of the Vickers deal. I reported this to TWA. I arranged for our attorney to go to England to deal with Vickers house and Vickers, and upon request from Carter Burgess, arranged for Mr. Leslie to go over and work on the financial side of the deal, which he did.

Q Who was the attorney who went to England?

A Beg your pardon?

Q Who was the attorney that was sent to England to work on this?

A Mr. Harry L. West.

[13014] Q Of the Chadbourne firm?

A Yes, sir. During this time I had discussions by telephone with Sir George Edwards; and met with a number of his representatives over here, both on contract and technical matters. The nature of the deal was complicated, because it involved considerable use of foreign money rather than U. S. sources.

However, Mr. Hughes wanted to know one day what I thought about the deal, should we proceed or shouldn't we proceed, and I remember telling him that I didn't feel that with the recent change in TWA management that I would be — that I was confident in expressing the view of TWA, Mr. Burgess was relatively new, and that if he wanted an opinion from TWA that I could produce this more ably if I discussed it with him. He said "Well, by all means, do that."

Q "With him" meaning with Burgess?

A With Burgess. Well, "with him," with TWA management, certainly including Burgess.

Q Yes.

A The meeting was held in New York, with Burgess and others, and George Spater called me relating the results of the meeting. I wasn't able to be at the meeting, although I had Mr. Rourke there.

[13015] As I recall it, there were a number of stipulations which TWA management felt should be met prior to any commitment, but that if these were met then a commitment would be in order. This was passed on by me to Mr. Hughes.

Q Can you describe generally what those conditions were that the TWA management felt should be obtained prior to a commitment?

A Well, one that I remember is an increase in payload range that I mentioned earlier, one was financing of all except 20 per cent —

Q Of the total purchase price? 20 per cent of what?

A It was a package deal, Mr. Davis. It included more than the airplanes. It included airplanes, spares, and some other things, if we wanted them. We hadn't fully completed that part of it. Spare engines were included, for example. I don't want to mislead you. It wasn't a package deal all from Vickers, but several deals, all of which were wrapped up in a final package, we will say, simultaneously. At least, we were working toward that.

The Special Master: The question is about the 20 per cent, what is the 20 per cent.

A The 20 per cent, I am a little vague on that. I think it's 20 per cent of the airplane and spares, to the extent that we committed for spares, to go with the airplane [13016] from Vickers. I am not clear at the moment as to whether or not the 20 per cent applied to the engines, or if that was a hundred per cent, or what it was. I simply don't recall now. I am not clear as to the extent of spares we actually had in it at that time. I seem to recall the spares were, to some extent, an elective, that we either could or could not have them included.

Q I interrupted you when you were about to say that you reported to Mr. Hughes the conditions which the TWA management felt should be obtained prior to a commitment. Will you pick up from there?

A I mentioned two of them.

I am not certain on the others. I seem to recall there was one relating to price from TWA management, but I don't remember if this is really so or not. And there could have been possibly one more.

The result of reporting this to Hughes was that —

Q Before you give us the result of the reporting, can you tell me what happened when you reported?

A Well, that was what I was going —

Q I am sorry. I thought you were going to give me an end result as a result of reporting without telling me what happened when you reported to Mr. Hughes.

A I don't remember exactly what happened, except I [13017] reported by phone, and the net result of that was that we set out to deal on the Viscounts, but in a way to comply with the stipulations from management.

Q Did Mr. Hughes encourage the management to try to get the Viscounts? That is what I am trying to get at.

A He had appointed me the coordinator on this project, that is, the development of the specifications and the contract, and urged, you might say, from time to time, that all this be expedited. I mentioned it had taken a little longer than I thought, and it sure did. So his directive or result of the conversation was that I should continue to work with Vickers, and bring them around to complying with these various items, although at the same time Mr. Hughes did or said he did, and I am sure he must have, talk to Sir George Edwards himself, and I don't know whether this was as a result of Sir George calling him or Mr. Hughes calling Sir George. I don't recall now.

I think another condition, if I can revert to that, was that the specifications be satisfactory to TWA.

Q To which?

A To TWA.

Mr. Williams: That the specifications be satisfactory to TWA.

A This had been our intent, Hughes and I. This had [13018] been the understanding and intent in that respect.

At some point Hughes committed to Sir George Edwards for the procurement of these 15 airplanes, and Vickers had

begun to prepare for the installation of some of the changes and modifications that we had required as a result of our specification negotiation. I don't have the impression at the moment that they had gone too far in the actual installation in aircraft, but I can't be certain now just how far they did go.

As I recall it now, and I have to give you this as my best recollection, Vickers met the 20 per cent criteria, they met the specifications criteria substantially—no one ever bats a hundred per cent, but we felt the specs were agreeable—and they did meet, as I mentioned earlier, the payload range aspects.

It was very, very late in this negotiation that it was discovered that the man in Vickers with whom we were dealing thought that he had an agreement on the airplane price when he in fact did not.

As a result of this, we undertook a price negotiation which became tedious and somewhat prolonged. It included discussions with a number of Vickers people who came over for the purpose, and included such things as escalation or let's say the establishment of the [13019] reasonableness of asking price compared to what they had obtained or contracted for with other airlines, but considering things like labor inflation, parts cost rise and the like during the intervening period. It really became involved.

We were unable to come to agreement on price because we were unable—by "we" I mean I and the people that were helping me—I was unable to get Vickers to agree or to meet the objectives in price that I understood that Mr. Hughes desired.

This finally got to the point where Vickers said "Look, you make us an offer. We don't care what it is. Make any offer. We might take it."

I reported this to Carter Burgess. Carter did not answer, but referred me to Mr. Leslie.

Mr. Leslie advised that I had no authority to make any offer of any sort, that in fact no offer could be made. This was the first I had heard of this.

Mr. Barr: Could I have that last?

The Witness: This was the first I had heard of this turn of events.

A I was in New York in the next few days and discussed it personally with both Mr. Burgess and Mr. Leslie, and they had the view that there wasn't, as I understood it, [13020] that there wasn't any deal that could be made that TWA could enter into. However, unfortunately, by the time all this occurred, Mr. Hughes had already committed to Sir George Edwards to take at least 15 airplanes.

Vickers representatives were also in New York at the time, and told me that, look, they could understand that there might be problems. I might interject this, to say that TWA, in this particular period, had suffered a downturn in business, and this affected our ability to proceed. It wasn't a whimsical thing at all, I am sure. And that, referring to the Vickers representatives comments now, if there was anything that we desired, a different interest rate, maybe different terms, a different percentage of financing, just to say so. They weren't sure they could do it, but they would be happy to try.

I reported this to Mr. Burgess and Mr. Leslie, and it was clear that we would be unable to proceed.

This was reported to Mr. Hughes, who seemed rather upset to be so advised, although I had indicated earlier that it appeared TWA was cooling off some. I discerned nothing as definitive as I have described, but a sort of lack of enthusiasm let's say.

Mr. Hughes, I recall, said that he had committed to Sir George, that he would not change that commitment, that

[13021] it was worth more to him and his reputation in Europe to stick with his word than to back out, and that was that.

To complete the story, it must have been a year later, I don't know when it was exactly, but Mr. Hughes called me, and the only thing he said was that he just talked to Sir George Edwards, Sir George was satisfied that he had discharged all his responsibilities, and he wanted me to know that he had fulfilled all his obligations, and that things were now on even keel again with respect to our relations with Vickers.

Q And in fact TWA did not take any Viscounts?

A No, TWA did not take Viscounts. Indeed, Vickers didn't build them for us, because by the time it was determined that we couldn't get together on price and on financing and other matters, Vickers simply stopped work and attempted to find other customers for the airplane.

One interesting aspect—it might be an interesting aspect—perhaps I should report here is that at no time, to my knowledge, did Vickers really understand, at least, the first number of months, whether this would be a Hughes Tool deal or a Howard Hughes deal or a TWA deal. I am sure they understood the airplanes would be used for TWA, and I was led to believe that the deal would ultimately in fact be a TWA deal, and not a Hughes deal, though it was [13022] Hughes and I that were negotiating it for TWA.

* * *

[13023] By Mr. Davis:

Q Before continuing where we interrupted, Mr. Rummel, you might clarify for me one possibly two points.

At one time you referred to an effort which was made for obtaining a Viscount out of the delivery schedule for TCA, a Viscount for Mr. Hughes or the Hughes Tool Company?

A Yes, sir.

Q Was that for just one Viscount?

A As I recall it, it was one airplane.

Q Do you know what—

A I do not—I would not say at this time, because I don't recall, whether there might have been a request for more than one. We wound up with one, and as nearly as I can recall, that was a request that I made.

Q You did receive one then?

A No.

Q You made a request for one?

A As I testified, I worked with Mr. McGregor, so to speak, I discussed the situation with him—

Q Who is McGregor?

A He is the president of TCA.

(Continuing)—at Mr. Hughes' request. The request that I can recall is for one airplane, but I am not totally [13024] confident that I might not have backed off from a request for two or three and backed off to one. That is quite possible.

Q I understand. My question now is whether or not in fact one was received.

A To my best knowledge, none were received by anyone.

Q Do you recall what the purpose was or the reason for making a request for one or which came down to one?

A I am quite certain, I can't be positive, but I am quite certain that Mr. Hughes expressed the view that he wanted the one airplane for some sort of flight test purposes. It was definitely an airplane for Mr. Hughes and not for TWA, as far as I ever knew.

Q I am not sure that I am entirely clear as to the time period involved, as to when these discussions with Vickers or this flight that you had on an experimental model took place.

Can you identify approximately when it was that this—

A If you are referring to what I recall as being the old 630, that was at the time of the first Anglo-American technical conference at Brighton, which would put a fix on the time. I can only guess the time now, but—

Q Subject to correction, can you give me an idea of the year which we are talking about?

[13025] A 1952 or 1953.

Q It started as early as that?

A On the 630. The discussions on the procurement that I described in such a lengthy manner was considerably after that.

Q I see. That is the other thing I am trying to establish, because it seemed to me that there were two different periods involved that you were describing, and I am trying to separate them now before you continue.

Let me see if I understand you correctly, that approximately in 1952 or 1953 you developed this interest in a Viscount and took a flight on an experimental model 630, is that correct?

A Put it in this perspective. We were following Viscount developments, as we tried to do many developments, to see whether or not we should have interest. I mentioned previously that we had analyzed and looked at the Viscount twice. This covers quite a period of time, and on two occasions I recommended to Mr. Hughes that we not move forward with a procurement program.

Q That is the other area I was trying to straighten out.

A We did not move forward with a procurement program. I think I mentioned in the testimony previously [13026] just a few minutes ago that when I expressed this view to Hughes I did it with the confidence that I was also reflecting knowledgeable people in TWA.

Q I remember you testifying to that effect. I am try-

ing to get you to give me an approximate time when that event occurred.

A I would be hard put to pin that down.

Q Was it still during the Damon regime?

A Yes, I think so.

Q What was Mr. Hughes' reaction to that report? I gather—

A It wasn't quite that formal. This was in the nature of a series of phone conversations, as I recall it, and the net result was that neither TWA nor Hughes procured the airplane.

Q You mean that airplane of the model 630 type?

A No, no. The 630 was not the production type airplane at all. The 630 was the prototype, and the production airplane was a larger and fairly substantially different model.

Q Now I am trying to get you to identify the model as to which you advised Mr. Hughes you would not recommend and which you felt reflected the views of TWA and as a result of which you did not move forward with [13027] procurement negotiations, as distinguished from the type of aircraft as to which you did have these lengthy negotiations. That is what is confused in my mind from your prior testimony.

A Well, I don't recall the model number, Mr. Davis, of these airplanes. It was the kind that Vickers had slated for production for the delivery period that we were considering at the time.

Q Can you identify it, then, by the period, by the time period.

A Well, let me say I have the impression now that had TWA moved forward with Hughes in the first instance we would have far and away been the first to have Viscount in the States. We were, if not the first, among the first U. S. airlines to express interest in the Viscount.

Q I gather from your testimony that there was a model or type of Viscount being offered by Vickers which you felt was not suitable or desirable from TWA's point of view, and that at some later period, and that is what I am trying to identify, one period against the other, you did become interested in a Viscount, if certain specificational requirements were met, and—

A Maybe this will help, Mr. Davis. I may have confused the issue by talking about the 630 at all. [13028] The 630 was a prototype, the first Viscount produced. It was the only such airplane produced. The airplane was reengineered, the fuselage was lengthened, the fuel capacity changed somewhat, as I recall, and other changes made. Then it was placed in that subsequent configuration in production. That became the first production Viscount, the first group of which went to BEA.

From that time on Viscount remained in production as essentially the same basic airplane. There were changes, however, introduced at various times along the production line. The engine was uprated in power, other changes were made. I can't recall at the moment whether there was a still longer fuselage version or not. There might have been. Continental might have gotten a longer fuselage, for example.

So there was no splitting of the line or two distinctly dissimilar models. It was an evolution of the first type that was then produced in series, so to speak, in this one production line. I hate to take the time to elaborate on all these points, but in the interest of accuracy, when I say one production line, I am speaking figuratively, because the airplane was produced on more than one production line in England.

The Special Master: Mr. Davis, I am not [13029] clear about this airplane that they did

recommend having a contract about, whether it was because it was an improved airplane or because it might be more attractive since Capitol was not able to take it.

Will you try to clarify that?

Mr. Davis: I will, but my recollection of the testimony is that—and I am trying at the moment to do it by a time basis—my recollection of the testimony is that there came a time when TWA thought they might be interested in a Viscount if certain changes, features, were met, and that they had discussions along those lines, and Vickers agreed to do it, and that triggered off the negotiations.

But I will try to clarify it with the witness.

Q What I wish you would do, Mr. Rummel, is to describe as well as you can what apparently were two periods, if not two types of aircraft; namely, the initial offering or approach that was made by Vickers, which resulted in your decision not to recommend the aircraft, and the event or events which occurred which developed into a new interest by TWA, and which resulted in the negotiations that you have described.

Do you follow what I am trying to get at, and what the Special Master is interested in developing?

[13030] A The trigger for a renewed look at the Viscount was the advice from Christopher Clarkson, which I then handed on to Mr. Hughes, that the 15 airplanes would be available.

Q That 15 airplanes would be available?

A Yes, as a result of the Capitol cancellation that Clarkson at this time seemed perfectly assured of.

Q Can you give me the approximate date when that event occurred? The date is always subject to correction. If you can associate it with an event—

A I can't be really specific. As I said before—

Q About the time Mr. Burgess came in?

A About the time he came in, or shortly before. I am not certain exactly which. It could have been shortly after he came in. It was a fairly unexpected development, I think, although many of us were surprised when Capitol ordered that many airplanes in the first place.

Q Then, if I understood you correctly, as a result of your reporting that to Mr. Hughes, Mr. Hughes showed interest, and suggested or requested that you—

A I am not certain what additional testimony you are seeking at this point.

[13031] Q I am merely trying to develop all of the facts relative to what happened in connection with these efforts to negotiate and obtain or procure this Vickers product.

A Well, I indicated earlier that the result of the conversation with Hughes was a request that I explore the matter further with Vickers.

Q That was a response you received from Mr. Hughes when Mr. Clarkson of Vickers indicated that there were 15 Viscounts available as a result of the Capitol cancellation? Do I have it correctly now?

A Just as I testified previously, Mr. Davis.

The Special Master: Mr. Rummel, to clarify what I was getting at, it seemed to me you made it clear that you would not recommend this airplane, and then later you came along with a recommendation.

I didn't get clear in my mind why you would, at a later date, recommend an airplane that you strongly recommended against. There must have been some factors there that you haven't made clear to me, anyway.

The Witness: Well, there was quite an interval of time between the earlier recommendation and the

final recommendation. A number of things [13032] had occurred. One was that the airplane became a better airplane, and the recommendation from TWA to move forward was conditioned upon the airplane being still better; that is, having more payload and more range.

The other situation which I think was slightly different was that the recommendation given to Mr. Hughes in the last case reflected results of a management meeting in New York, at which time certain conditions were arrived at, and while I discussed it slightly with Mr. Spater, I accepted that as the directive, and simply handed it on to Mr. Hughes, passed it on by phone to Mr. Hughes.

Q Then you also referred, if I recall, to a team visiting various airlines which had those Viscounts in operation for the purpose of getting more statistical data and the report that TCA was cooperative. I am trying to place that timewise in relationship—

A That was part of the investigation of the Viscount that followed—

Q Clarkson's—

A (Continuing)—Clarkson's call and my conversation with Hughes. In fact, I discussed this approach with Mr. Hughes, as I recall it.

[13033] I must say that the general results of that investigation, as I recall it, led us to be somewhat more encouraged than we thought we would be when we undertook the investigation.

Particularly, as I recall it, TCA was quite content, and showed good—reasonably good operating cost factors.

Mr. Davis: Does that clarify the record sufficiently?

The Special Master: Yes.

Q I think, Mr. Rummel, that perhaps it would be appropriate for you now to complete your description of relations with Vickers when we took the recess.

A Vickers understood the development of a fairly large four-engine jet in a preliminary way, and advised TWA of this, and I recall discussing this to some extent with Sir George Edwards and Derek Lambert at Weybridge during a visit there.

This particular project was subsequently dropped by Vickers.

Q Do you recall the time, approximately?

A No, I don't. I would have to reconstruct it now. I don't recall it.

After that Vickers undertook development of an [13034] airplane model called the VC-10, and kept us reasonably well advised of what it was and what they intended to do. They finally developed—I guess that's the wrong tense—they finally decided to develop two models, the VC-10 and what was called the Super VC-10, both of which were ordered by BOAC.

Q Is that a jet?

A This is a large intercontinental four-engine jet. And even though commitments had been made for Boeings and Convairs, Vickers would, when it was convenient for them to do so, drop in and advise us of the progress and the general status of their program, but not with any serious efforts that could be discerned to sell us on the airplane.

Q Approximately when did that take place?

A Oh, the best I can recall, Mr. Davis, frankly, I don't remember, Vickers finally decided to go ahead full steam, but it was probably on the order of 1958, or thereabouts. None of the VC-10s are in service yet.

[13035] Q And you or TWA did not make any particular study or evaluation—

A Oh, yes, we certainly did. We calculated or estimated the operating cost, route characteristics, gave it a

look see to the point where we were satisfied as to how it would compare with the Boeings and derivative models of the Boeings.

Q What was the result of those studies, what conclusion did you or TWA arrive at?

A The final action was to buy additional Boeings.

Q What decision are you referring to referring to acquiring additional Boeings?

A The one made during 1961.

Q Did you have any conversations or communications with Mr. Hughes or the Hughes Tool Company or any of its representatives with respect to this Vickers VC-10 versus additional Boeings?

A Well, I don't recall discussing the VC-10 in this way, no.

Q Do you recall any discussion of any kind with either Mr. Hughes or the Hughes Tool Company or any of its representatives with respect to the decision to be made by TWA?

Mr. Williams: You mean going back to 1958?

Mr. Davis: I am referring to the offer or offering by Vickers of VC-10s and the evaluation made by TWA and [13036] the decision, as I understand it, to acquire additional Boeings rather than acquiring Vickers VC-10s.

A I don't think I have been clear, Mr. Davis. I would like to try to clarify one point.

Q Please do.

A It was not really a contest between the Vickers and the Boeing. It was already clear to us that these airplanes, in our view, were of a different order, the better airplane by far, considering all factors, was the Boeing. It was not a contest between the two.

What I was trying to indicate was that the final result in terms of procurement action was that we didn't buy the VC-10, we finally bought Boeings.

Q And now I am trying to determine whether or not that final action or in connection with that final action there was any communication of any kind with either Mr. Hughes or the Hughes Tool Company or any of its representatives.

Mr. Williams: Is this in 1961?

Mr. Davis: No, relating to the action not to acquire VC-10s and acquire additional Boeings.

A Well, I had no discussion with Mr. Hughes in 1961 at all.

Q Prior thereto. My question still is as broad as I intended it to be, Mr. Rummel.

[13037] A The difficulty I have is tying it into the procurement of the Boeings.

Earlier in a phone conversation I am sure that I apprised Mr. Hughes to some extent of what the VC-10 was, and that it was being developed, but I do not recall any prolonged discussions with him on it. It was certainly not discussed in relation to the procurement of the 331Bs.

Q Now I am interested in what took place or what reaction you got from Mr. Hughes or anyone else representing the Hughes Tool Company.

A Well, I don't recall Mr. Hughes' reaction. I might say the 331B didn't even exist then, as I recall it. I don't recall any specific reaction to this.

Q Does this complete the Vickers story, if I may refer to it that way?

A That's all the salient points I can recall. I am sure that much more went on. I may have oversimplified some items, or I may have unintentionally omitted some others, but that is all that comes to mind at the moment.

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[Testimony — September 17, 1962]

[13049]

Examination (Cont'd) by Mr. Davis:

Q Mr. Rummel, I believe we had just about finished describing the Vickers situation at our last session.

I recall your saying that a year or so after TWA decided to withdraw from the Vickers negotiations Mr. Hughes [13050] called you and indicated that somehow he had discharged his obligation, legal or otherwise, to Sir Edwards.

Do you remember your testifying along those lines?

A Yes.

Q Did Mr. Hughes indicate or disclose to you how that was accomplished?

A No.

Q Do you know, did you find out from any other sources how that was accomplished?

A I can give you my general understanding at the time.

Q Please do.

A But much of this is indirect information.

Q I will take that, and as you describe your understanding, I would appreciate it if you would make an effort to identify the source of your information as well as you can.

A I doubt if I could pinpoint the sources. I had the impression that Leonard Schwartz was working on the disposal of the aircraft that I understood Mr. Hughes felt he had a moral or possibly legal, although I believe moral, commitment for.

Q You are referring to the 15—

A The 15 Viscounts. I am not at all clear as to what happened to the one airplane that I had arranged for [13051] delivery position for. This particular one, as I

recall it, was the Hughes Tool Company venture entirely, including Hughes having plant representatives at Vickers during the time that it was being built, or at least part of the time that it was being built. A number of people, as I recall it, were knowledgeable in this area, including, I believe, Raymond Cook.

I believe that one way or the other part of the airplanes, at least, wound up at Northeast Airlines. However, whether this was a result of a Vickers effort or let me say the degree to which it might have been the result of Vickers versus Hughes or the extent to which Hughes may or may not have participated in that, I couldn't say. I do know that people were quite knowledgeable in this, and I believe Schwartz was involved in it, or at least gave consideration to or worked on either the disposal of or aiding Vickers in the disposal of some of these or all of these aircraft.

But as I said in the beginning, I am a little vague, and this would be essentially indirect information. I did not directly participate in any way, as I recall it, in that activity.

Q If I understand your testimony, it is that your understanding is that some of these 15 Viscounts as to [13052] which Mr. Hughes assured Vickers would be ordered by TWA and which in fact were not ordered by TWA were acquired by Northeast Airlines?

A That was my understanding at the time. I can't say that I specifically checked serial numbers against serial numbers to prove it.

Q You understand, but without having any specific information, that Mr. Hughes, through Leonard Schwartz, or someone else, may have been of some assistance to Vickers in placing some of those aircraft with Northeast?

A I don't know the extent to which Mr. Hughes may or may not have personally participated in this at all.

Q Is it your understanding that the Hughes Tool Company made efforts to assist Vickers in placing some of those 15 aircraft with Northeast or any other airline?

A I said it is my recollection that at that time Mr. Schwartz did work in this area. The extent to which he may have been directed, or by whom, I couldn't testify. I just don't know. As I said before, this is indirect rather than direct information on my part.

Q Can you tell us at least what was your understanding as to Mr. Schwartz' position in that period?

A Well, as I recall it now, he was, at least during part of this period, was an officer of Hughes Tool Company.

Q Do you happen to know how many Viscounts Northeast [13053] acquired, in fact acquired?

A I would be guessing at the moment.

Q Do you have any—

A The number that comes to mind is 10 to 12, but I am really not certain.

Q Have you now completed your description of the relations of TWA with Vickers insofar as it involved offerings of equipment?

A Well, in recent months, possibly extending over a year or more, Vickers has made occasional efforts to sell the BAC-111. You recall I mentioned this is a smallish twin-engine jet.

I have talked in my office and in other TWA offices a time or two on this with certain Vickers representatives. I inspected the BAC-111 mockup during the Farnsborough show recently, and additionally, Vickers has, through its period of 111 gestation, and since it finalized its decision to proceed with the type, has supplied data on the airplane to Mr. Rourke in Kansas City and, to some extent, to me here in New York.

Q For the purpose of the record, and my understanding also, can you describe the kind of aircraft with which the BAC is, generally speaking, competitive?

In other words, could you identify or describe other [13054] manufacturers offerings which could be regarded as competitive with the BAC-111?

A Well, what is competitive and what isn't depends on how the airplanes are applied to a specific route, I think, in the last analysis.

In the terms that we usually, in the airlines, speak of competition with respect to what the manufacturers might consider to be competition might be something else, because in that context they normally think of what is on the market that would compete with it with respect to sales of the airplane.

Are you speaking now from the standpoint of what the airplane as a product is competing with with respect to the Vickers sales effort, or what might be competing with it with respect to its use on the airline?

Q I am interested in your answer, Mr. Rummel. Perhaps it would be worth digressing for just a moment, and have you describe the difference between what the manufacturers regard as competition for their product versus the product of other manufacturers and what the airlines regard as competing types of equipment.

A Well, what I have drawn here is not really a fine line. It may be too fine a line in some respects.

But the manufacturers of the BAC-111, if I can [13055] presume to guess what they might be thinking of, would probably not be thinking at this time that the Lockheed Electra is a competitor of the BAC-111.

Q You said they would be thinking?

A Would not, because they would not view additional sales of the Electra, in my judgment, as a threat to the sales of the BAC-111.

Now, an airline, however, considering the use of the BAC-111 — let me say I believe most airlines would evaluate their own competitive situation, and would have to

reckon with competitive use of Electras, because they are still in fairly manifold use on the airlines, in fairly manifold or large scale use on the airlines.

Q I would appreciate it if you could generalize a little bit more than merely the example of the BAC-111 against the Lockheed Electra. I am trying to understand the factors which create competition between various manufacturers of aircraft, competition as among themselves, as distinguished from the competition of airlines with each other, and their interests, desires, with respect to equipment purchases.

Do you follow what I am trying to understand a little more clearly, and I would like to have the record reflect a little more clearly, with your background and [13056] experience, evaluating various offerings, the recommendations, the part that you played, so far as TWA is concerned, at least, as to what they have acquired or not acquired, have you defined a little more fully what you have referred to as competition between manufacturers and the competition between the various products which they offer as distinguished from the competition between types of aircraft as seen from the point of view of the operating airline?

A Well, I am not sure, Mr. Davis, but I will try to express the views that I tried to express a moment ago more fully.

I don't really believe there is anything peculiar about the competitive nature of building or flying airplanes, except the fact that they are airplanes, compared to competition generally. Certainly in some instances manufacturers tend, to some extent, at least, to avoid direct competition by aiming the product at a market they believe to be that possibly not covered as well — I am sorry. I don't mean to say not covered as well, but it isn't covered by another product — rather than have it lie parallel to that other product.

Boeing, for example, is currently developing the 727, DeHavilland is developing a very similar sized airplane, and one that is of similar design, called the [13057] Trident, that I mentioned previously. The Trident is slightly smaller than the 727, but if one had to generalize, I think they would have to say they are generally aimed at the same kind of a market with respect to the sale of those airplanes to the airlines.

The BAC-111 is a smaller airplane.

Q Smaller than either the Trident or the 727?

A Yes. However, one could not say that it does not compete for a piece of the same market as those larger airplanes, but one could say that Vickers have aimed it more toward a still shorter haul concept, and toward a market that would be to a lesser degree in direct competition with the 727 and the Trident than had they made an airplane more like those two.

The Douglas small twin-engine jet, I don't recall the number of it, falls between.

Q Between what?

A Between the Trident and the 727 as one broad category, and on the other hand, the BAC-111. By "fall between" I mean with respect to size.

But I would say that all four of those types are, in a fairly important sense, competitive one with the other with respect to capturing the available dollar.

Q From the point of view of the airline, the pur- [13058] chaser, is it relatively easy to describe or identify the various offerings by these manufacturers as being competitive from the airline's point of view, or does an airline find itself in the situation where it does not have very much choice as to what equipment is available because of its particular route structure?

A I would say this question gets at an analysis on the part of each individual airline, or at least their thinking

on many of the items, if not all, and maybe more than I mentioned the other day, that an airline would normally be expected to consider when making an equipment selection.

What I meant to observe earlier was that one airline may find itself fairly fully equipped with an airplane that so well serves the function of the new type that the new type would not be given serious consideration, and on the other hand another airline may be short of equipment in the particular area represented by the new type, and it would represent a market for the product.

What the airline views as competition, to possibly repeat, depends on what he finds flying alongside him on competitive segments to a great extent. The competition isn't that simple. Feed; other factors, enter into it, rate structure, and whatnot.

[13059] Q To go back, then, to the question I was asking you, namely, can you identify the other type of aircraft available which would be regarded as competitive with the BAC-111?

A Here again, by "available," I would like to construe that to be either being offered or in prospects of being offered, that is, as of now.

Q That is correct, and assuming that if financing was not an insurmountable obstacle.

A Well, I expect that one could reasonably expect smaller feeder airlines to have interests in the BAC-111, that competing with it might probably be equipment they already have, additions to the fleets they already have, such as the Fokker F-127—I am sorry—the Fairchild F-127—F-27, I guess it is—at least, the small twin-engine Fairchild, and, depending on the nature of his routes, possibly larger new equipment such as the bigger jets I mentioned a few moments ago.

For example, an airline that has numbers of short

haul segments combined with numbers of long haul segments might elect, depending on numbers of factors, to procure a somewhat larger airplane than a type that he might feel would be ideally suited for the short haul operation alone. This might be particularly true of some of the smaller airlines.

[13060] I think I am having difficulty, and I apologize for it, because to me I am trying to describe a term that is so obvious to me that it is difficult, if you know what I mean.

Q I appreciate that, and I think I understand from your prior testimony your difficulty by reason of your description of the manner in which an airplane is developed between an airline and a manufacturer so as to primarily meet the needs or requirements of an airline, but I am not sure that you have understood my prior question.

From TWA's point of view, I understand that Vickers is currently making an offering of the BAC-111, my question is can you identify the other types of aircraft that are also offered or available to TWA which might be regarded as competing with the BAC-111 in the sense that TWA has a choice of deciding whether to procure BAC-111s as against procuring something else.

What I am trying to get you to do is to identify from your point of view the other types of aircraft being offered to TWA, if you please.

A I would say the Caravelle, the 727, the Trident, and to the extent that the Douglas offer is in fact an offer, the small Douglas jet.

[13061] Q In other words, all these types of aircraft currently are competing with one another for the business of TWA, so to speak?

A Yes, but the application of these airplanes wouldn't necessarily be the same.

Q I don't understand what you mean when you say

that the application of these airplanes won't always be the same.

A The application of these airplanes to TWA's route structure might be somewhat different depending on whether the BAC-111, for example, became one of our fleet airplanes or whether the Boeing 727 did.

Q I don't understand what you mean by that.

Mr. Williams: I think he means the usage you put them to, but I don't know.

A The use of these airplanes in our system might vary somewhat depending upon an analysis by the scheduling group when the airplanes were in fact procured, if they are, and I would guess that use might be somewhat different between these types, at least in some areas.

For example, the BAC-111 is a smaller airplane, and could perhaps be used on thinner traffic segments than could the 727.

On the other hand, the total routing of the air- [13062] plane is the factor. Maybe a thin segement is tied onto a fat segment, and the 727 would do quite well. By nature, though, the airplane is smaller, and because of that I would guess would have a somewhat different application if it were procured.

Certainly, the application of both of these types to some extent would be the same.

Q Are you saying that the decision of TWA in choosing an aircraft in this category which you have described as being competitive types, the BAC-111, the Caravelle, the Boeing 727, the DeHavilland Trident and the small Douglas jet, the decision of the airline, of TWA, would depend upon the result of its analysis as to the economics of how the aircraft would operate on its various route structures—

A Well, my recommendation to procure would include

consideration of that and many of the other factors that I have already discussed.

Q Let's return to where we were, which was to ask you if you had completed your description of the relations or offerings by Vickers.

A No, there was one more. That was the Vickers Vanguard, which is a substantially larger four-engine turboprop than the Viscount. It was an entirely different [13063] design than the Viscount, and was intended to be placed in production either concurrently with or following the production of the Viscount.

Q When was this?

A This airplane was produced for BEA and TCA, and as nearly as I can recall, first saw service around 1958. Vickers kept us quite well apprised of the progress being made on the airplane.

As I recall it, they conducted route analysis and made other data available in an effort to interest us in the airplane. That is all the Vickers airplanes I recall at the moment.

Q What happened to their efforts to interest you in the airplane?

A The airplane was finally taken out of production, Mr. Davis, presumably to make way for other newer production at Vickers.

Q So that, in effect, this was a result of a decision being made by Vickers rather than a result of a decision being made by TWA?

A Well, airplanes of this type were not procured for TWA. Our main interest at the time the Vanguard was being proposed centered on jets.

Q Can you identify the group or types of aircraft which were competitive with the Viscount and the Vanguard [13064] of Vickers at the time that they were being offered?

A I would say the Lockheed Electra, to some extent the Viscount, and to the extent that their useful prospective life would overlap, the Convair 880, and on some segments, the Boeing jets.

Q Which Boeing are you referring to?

A The 131. However, the Vanguard I think was available before the time the 880 was intended to be available and the time the Boeing was available. That is, before that time somewhat.

Q I am not sure that I understood what you meant when you made a reference to the useful overlapping life.

A Well, as I recall it, Mr. Davis, the Vanguard—and I must say, this is my current impression of what existed then—my recollection is that the Vanguard was available somewhat before the jets, but close to the jets, reasonably close.

Well, any major procurement program would envision using the aircraft over an appreciable period. The period that they are amortized or depreciated over depends on various circumstances, but normally spans a fairly large period, say seven to ten years.

During this period of depreciation had one procured, for example, Vanguards, they would have been presumed [13065] to have been in use in competition with jets that would have been procured shortly after the Vanguard, either by the same airline or another airline.

Q Was there any discussion between TWA and Mr. Hughes or the Hughes Tool Company with respect to the possibility of acquiring the Vanguards from Vickers?

A Well, Mr. Davis, it is not unlikely that there were discussions with Mr. Hughes that encompassed the Vanguard, but I don't recall any specific instances at the moment. There were, as I said before, numbers of telephone calls on equipment matters.

Q But none that stands out—

A None that comes to mind at the moment, specifically on the merits of the Vanguard as such.

Q Do you recall whether or not Mr. Hughes or the Hughes Tool Company in one way or another indicated to TWA that they would appreciate giving special consideration to Vickers and the Vanguard in view of the disappointing aftermath of the Viscount episode, or anything of the kind? That is the kind of thing I am trying to find out, if it took place, Mr. Rummel.

A I don't recall.

Q If it had taken place would you recall it? I mean if Mr. Hughes or the Tool Company had approached you [13066] or TWA and said "I had some kind of an obligation to Vickers, and I would appreciate it if TWA would make a particular effort to favorably consider the Vickers product," would you remember that kind of a message or communication if it had taken place?

A Oh, I might, Mr. Davis. Going back in memory, some things stand out in my mind that I think are quite important, some things stand out that are not important, something at the time either cast an amusing light or some aspect which made it stick. It is hard for me to say what I would have remembered. I would say that something like that, had it been a directive, put in the light that would recall it now, then I would.

It is hard for me to sit here and say what I would have recalled. I would think that probably I would.

Q The fact is that you have no recollection whatever of having received a directive from Mr. Hughes to favor the Vickers product over any other product?

A Well, the answer I just gave is with respect to the Vanguard, and I thought you were inquiring as to whether as an aftermath of the Viscount Mr. Hughes suggested that we pay particular attention to the Vanguard or favor the Vickers product. I do not recall that.

Q Now I think we can go to the next manufacturer [13067] which you have identified. I believe that was Handley Page of England.

A I mentioned Handley Page.

Q Will you give us the same description of what offerings, if any, were made by Handley Page in the way of commercial transportation to the airline industry in the United States?

A We didn't spend very much time with Handley Page. However, we did receive a fairly brief exchange from time to time of data—excuse me; I think the word "exchange" is probably wrong—we received some data from them. I don't recall sending any back to them. We had one or two brief discussions with Handley Page representatives. I don't recall just what it was at the moment they were offering, frankly. At one time I think they were considering a high speed commercial variant of the Handley Page jet bomber.

At one time they had an airplane which, if I recall it correctly, externally, at least, wasn't far removed from a series that was already available in this country, the Douglas piston transport. I believe some of that type were used by BOAC. I am afraid my recollection is not very specific on Handley Page. They were one of the companies that I would say, in terms of degree, [13068] were of lesser interest than some of the others.

Q Do you recall during what period of time it was that Handley Page was in the market of making offerings to United States airlines?

A I don't really know the extent to which they dealt with other airlines. I would only assume that since they were talking to us they were talking to other airlines.

Q I am trying to identify the period as well as you can do it, and always subject to correction, Mr. Rummel.

A Well, I can't be sure, but I think it falls in the

period, oh, possibly 1956 or '57 on. I am not certain of that date, Mr. Davis.

Q During the jet age period?

A Essentially during the jet age, maybe with minor overtures just before that.

Q The next one that you identified was Bristol of England. Will you give us the same information with respect to that manufacturer of aircraft that you have with respect to the others?

A The first work with Bristol, as I recall it, predated the Anglo-American conference at Brighton that I mentioned a few days ago. I can't recall the exact time now, but Bristol put forward information which was [13069] descriptive of the Britannia in an interest to—in an effort to interest us in it.

I visited the Bristol factory I believe twice on trips to England, and inspected the Britannias that were in production, and I think was kept generally apprised of the progress that Bristol was making in developing and selling the airplane.

The airplane was ordered by BOAC and a number of other airlines, and I believe was also ordered, and I don't recall if this was initially or later on, by British military services as a transport.

The airplane was a large four-engine turboprop that I believe I described heretofore.

Q Having identified it as a large turboprop, perhaps at this point it might be helpful if you would identify the other type of aircraft that might be considered as competitive with the Britannia, or with which the Britannia was competing for whatever market.

A When the Britannia was first discussed, Bristol anticipated delivering it much sooner than they finally did, and at that time, had it been produced when Bristol expected, it would have been competitive to contemporary

U. S. piston airplanes, and later on with the Electra, and still later on with the jets.

[13070] It in fact wasn't produced when Bristol first thought it would be, so the competition that it found itself up against varied through the years.

Q The only other U. S. manufacturer of a turboprop was the Lockheed Electra, is that correct?

A Of a large turboprop, yes.

Q The one that would be competitive with the Britannia, the Viscount, or—

A The Britannia had much more range than the Electra. The Electra could have competed on some segments, but not on the extremely long-range segments.

Q You say that the original plans of Bristol, if they had been able to deliver as soon as they originally anticipated, the aircraft would have competed with the U. S. piston engine. Which U. S. piston engine aircraft would it have been competing with?

A The late Constellation series and the DC-7 series. It in fact did compete in international service with these airplanes. Again, the DC-7s and Connies were still in service when the Britannia finally appeared.

Q When I refer to the competition between types of aircraft I am—perhaps I should learn to use a different expression, Mr. Rummel—I am trying to determine the other types of aircraft which were available to airlines for [13071] procurement for a purpose of determining to what extent airlines had a choice between procuring Britannias or Electras or Viscounts or Vanguards or whatever other types of aircraft, jets or piston engines, so far as that goes, for the purpose of determining what competition Bristol was facing as a manufacturer and would-be seller of aircraft, what kind of competition it was facing from other manufacturers of aircraft.

Have I made myself clear to you?

A In addition to those I have mentioned, I believe the Comet would have been construed by Bristol as being a competitor.

Q For clarity, would you mind now identifying, listing for me, so I can understand, the various types of aircraft which were in competition with the Bristol Britannia in the sense that I have just tried to explain to you?

A Well, this would be my personal opinion, but as I understood, you are asking what Bristol considered their competition to be at that time.

Q That's right, but from your point of view, as a person interested in choosing or deciding which type of aircraft to procure for the benefit or use of TWA, I am interested in your opinion and judgment as to which aircraft were competitively available to you. I do not mind [13072] your giving me also, if you care to do so, your understanding as to what Bristol might have considered its competition, but I would appreciate it if you could do it separately.

A I will try, Mr. Davis. As I recall it, my distinct evaluation of Bristol at the time was that they could not reasonably be expected to produce the Britannia when they said they—when they were planning to produce it, so I tended personally to place the airplane in a bracket of time somewhat later than Bristol did.

Even so, in the beginning the Britannia would compete or did compete on the market with the later series of Constellations, the DC-7 and the Comet.

Later on the Britannia, once it was in production and fully certificated, and in service, it competed with jets from the standpoint of procurement, at least, Bristol made an effort in this direction.

As I recall it, Bristol claimed there was always a place for the Britannia, and that there was a place for jets as well, but obviously, to the extent that Britannias would be procured, it would, to some extent, displace the jet market.

It also competed, in this period, in this country, certainly, with the Lockheed Electra, but not in overseas service, because the Electra was not that kind of an airplane.

[13073] Q Perhaps I can approach what I am driving at a little differently, Mr. Rummel.

I understand your testimony to be that Bristol approached TWA or approached you some time before this conference at Brighton. You don't know the exact date.

Can you give me any idea of the year which you think that was?

A Well, it might have been around 1952, but I am not certain.

Q Around 1952. All right.

Apparently you gave some thought, made some studies, evaluated the possible use of the Bristol product, the Britannia, the possible use of that product by TWA, is that right?

A Yes, sir.

Q At the time that you were giving that consideration to this product what other aircraft from other manufacturers were also available to you or were being offered to the domestic airline industry which warranted consideration as an alternative to the Britannia? Can you describe or identify that situation for me?

A Well, I may have misunderstood, Mr. Davis. I thought that's what I did.

Q I think you did too, but in your answer I was getting [13074] a little confused when you began to describe the fact that the aircraft was competing on the routes with another aircraft. It may be that the answer is still the same.

Let me put it this way: At that time, assuming it was approximately around 1952, was that the period of time when there was also being offered to TWA a choice of late model Constellations, Douglas DC-7s, Lockheed Electras, the Comet, Viscount, was all this in the same period?

A I think I see what you mean. No. 1952 is the best date I can recall. It's around that period that I first visited the Bristol factory in England.

Q And you gave consideration to Bristol for what period of time following 1952, four or five years, two years, six months?

A I hadn't finished the thought I was trying to express.

Q I am sorry.

A I was going to add that at that time the Britannia was in the early stages of production. One may have flown or it may not have. I am not certain now. But it certainly was not available in the sense that airplanes could immediately be delivered.

Q That I understand, but a decision had to be made as to whether or not you were going to commit yourself for the [13075] product, is that right?

A Well, I wouldn't say so, no. I think the explorations at Bristol and with Bristol were aimed toward resolving whether or not we should be interested in procuring an airplane, and if we should be interested, then when we could, and how to go about it, that sort of thing.

I think we looked on the Britannia as an extremely interesting airplane, one that should be watched closely, particularly with respect to what the competitor internationally might do with it, we were interested in the extent of interest on the part of other U. S. airlines in the possible procurement of it, but I think after examining the airplane we were quite content not to move in the direction of the Britannia, at least until we were more certain of the true economic usefulness of the machine.

In other words, we, as I recall it, were content to see what happened and when it happened before we would have ranked it, for example, in the same competitive light, in terms of real interest, as we would have the late Constellation or the DC-7 series.

Nonetheless, the Britannia was given consideration, not only by TWA, but there were numbers of conversations with Mr. Hughes during which the airplane was described, performance aspects were discussed, power plant [13076] configuration was discussed, and that sort of thing.

Q With Mr. Hughes?

A Yes, between Mr. Hughes and myself, but I recall this, that there were a series of conversations. I couldn't begin to pinpoint the date, or precisely what was said in each one of them, but I do recall discussing the Britannia.

Q Can you give me an idea of the period of time during which it would be fair to say that TWA or you were giving active consideration to the possibility of procuring Britannias?

A Yes. Very active consideration was given to procuring Britannias during Mr. Burgess' regime as president.

Q So it began in 1952, during Mr. Damon's regime, 1952 or thereabouts, and continued until very active interest was shown by TWA during Mr. Burgess' regime, through 1958?

A I wouldn't say, Mr. Davis, throughout that period we would call it very active interest. There were periods when we did very little more than keep abreast of what was going on, be apprised by Bristol of what was going on.

The period of real active interest, where serious consideration was given to procurement of the airplane, was during the Carter Burgess regime.

Q At that time what other type of aircraft were you considering in lieu of the Britannia? What I am trying to [13077] get at is—

Mr. Williams: You mean during the Burgess regime?

Mr. Davis: During the period when he was giving serious consideration to the Britannia, and I

understand the Burgess regime was one of those times.

Mr. Williams: He said procurement as contrasted with just looking at it, I gather.

My problem with your question, Mr. Davis, is that they were looking at it from 1952, and I understand the witness to say that serious consideration to procuring it was during the Burgess regime, and I want to make sure that the competitive factors that you are calling for are during that period.

Q Was it only during the Burgess regime that you gave serious consideration to the possibility of procuring the Britannia, or had you given consideration as to the possibility of procuring the Britannia prior to the Burgess regime?

A I would put it this way, Mr. Davis: During the Burgess regime procurement of the Britannia was a red hot issue. We had considered the Britannia prior to that time, but more with respect to determining, to the extent we could, whether or not we should be interested in it.

[13078] My own personal view of the airplane, as I recall it now, was that we should wait and see.

During the Burgess regime, to answer your question as I understood it, the airplane wasn't directly competing at the time with anything, except to the extent that it was competing for available dollars, because by then the jetstreams had been procured—I am reconstructing this now from memory—we had done considerable work, I think in fact had ordered Convairs, and had ordered 131 and 331 Boeings—well, I will modify this to this extent: It probably did compete with the Electras and Lockheed efforts on the Electras, except we did not understand that the Electra was a coast to coast non-stop airplane, though as I recall it at the time Lockheed seemed to think it was, so we didn't put

it in the same category as the Britannia, which clearly could fly coast to coast non-stop with no great difficulty.

The idea that seemed to be the main idea here behind interest in the Britannia stemmed from conversations with Mr. Hughes. It went along this line, that if we could procure a reasonable number of Britannias, which we at that time thought was probably quite a comfortable airplane to ride in, both with respect to noise and lack of vibration, and if we would put it in coast to coast one-stop or non-stop service, and if we could do it quickly, we would have [13079] a very real advantage over the competition who at that time would still be flying piston aircraft.

Not only would it be more comfortable, the Britannia should have been considerably faster. We felt that if we could get a limited number of these airplanes, confine them, say, to New York-Los Angeles, New York-San Francisco, possibly a stop in Chicago, that we would, so to speak, have a leg up on American and United.

Now, we thought that we might be able to do this on a practical basis with a relatively few number of airplanes if we could make the right deal with Bristol and others so as to minimize the investment in training, spares and other support activities.

Numbers of plans were considered, including using the airplanes in international service, but what I am saying is that it sort of finally boiled down, as I recall it, to the most serious interest finally being in a limited number of airplanes in this domestic service.

Bristol was quite anxious to make a deal, to the point where it was quite willing to re-arrange delivery schedules to the extent that it could in order to accommodate Mr. Hughes and TWA.

During this period I think that I was negotiating with Bristol on behalf of Mr. Hughes, but not having it [13080] clearly understood whether the airplanes would finally be

ordered by Hughes or by TWA, although I believe the intent in this instance was to have them finally ordered by TWA.

The general Bristol situation at the time was somewhat confused, because for a number of reasons a number of airlines that had ordered the airplane were, as I recall it, seeking to change their orders for the airplane with Bristol.

One airline I think wanted to delay delivery. As I recall it now, I think that was Northeast.

Q Who?

A I believe Northeast.

Q Wanted to delay delivery of Britannias?

A Delay the delivery for a while. I don't recall the particulars, Mr. Davis, and I probably can't state it as a fact, but that is my recollection of the situation. Just why, I don't know at the moment.

Some of the smaller airlines not in this country had also approached Bristol in this respect, as I recall it, but as the negotiation continued Bristol approached numbers of them and others toward making airplanes available to—for TWA's use, believing, and I think they were certainly quite correct in this belief, that if they sold TWA they would have a strong wedge in the American [13081] market, and if the airplane was anywheres nearly as good as they claimed, they would be able to sell others simply because we had it for competitive production.

I don't recall the range or number of airplanes that we discussed, but it varied from five to some substantially higher numbers, the higher numbers depending upon what could be made available by Bristol.

This negotiation was carried to the point of preliminary review of specifications, Bristol—the tender by Bristol of letters offering the airplane.

I made a trip to Montreal at Mr. Hughes' request to inspect a Britannia which was at Montreal at the time. It

was my understanding that Mr. Hughes was in Montreal, and while I talked to him while I was there, I did not see him.

I did meet with men from Bristol. They indicated the airplane was available for Mr. Hughes to fly, and had been available for a number of days or weeks for that purpose.

I looked the airplane over and discussed a number of design features with the Bristol people, Bristol having opened the airplane up for that purpose.

By opening up, I mean opening inspection, the cowling and the like, things they could do without [13082] dismantling the airplane.

This airplane was also examined during flight tests for air purity. In fact, we did it on the Britannia before we, as I recall it, did this relative to the Viscount that I mentioned earlier that TCA had made available.

Air samples were taken from various places in the cabin and in the cockpit. I discussed the test with Mr. Hughes in some detail before it was undertaken. He was quite particular on how he wanted some parts of the test run. The test, in the first place, was done at his suggestion, but I concurred that it was a good thing to do. I was frankly concerned with this part of it.

The test results, once they were made available by the laboratory that assisted, were reviewed in some detail with Mr. Hughes.

Now, a corollary—corollary effort to these tests was to check into some of technical aspects of related items.

For example, at what temperature does the or would the fumes from various kinds of oil become toxic, if at all.

Now, this included petroleum based lubricants as well as synthetics. I recall being somewhat dismayed [13083] to find that not a great deal of information appeared to be available, particularly with respect to synthetics, that is, synthetic lubricants.

This part of it was done by my power plant specialist operating out of Kansas City, who then made this information available to me for review and for purposes of discussing this along with the flight test results with Mr. Hughes.

The net results of these particular tests was that we found no evidence of toxicity in the airplane, or any danger from toxicity.

The Special Master: I think this is a good place for a recess.

(Whereupon, a short recess was taken)

[13084] Mr. Davis: Will you read to the witness the last portion of his answer to refresh his recollection as to where he was in his narrative?

(The answer was read.)

Mr. Williams: Had you finished the answer, or do you want to add to it?

A I would like to add this, that by way of explanation, the reason the tests were undertaken in the Britannia was because in this particular airplane the air that was pumped into the cabin and the cockpit for breathing during pressurized operations all flowed through the power plants themselves, where heretofore, generally, airplanes had the air that was breathed pumped in by separate pumps or superchargers, disassociated except for the power drive, from the engines.

The question was whether or not the air passing through the engine could somehow become toxic, and this was the reason why it was felt appropriate to conduct the tests.

The Viscount was a different installation from the Britannia, but nonetheless we thought it appropriate in that case too.

Q Have you now fairly described the nature or scope of the investigation that was made by TWA relating to the desirability of procuring Britannias?

[13085] A No, I can elaborate somewhat.

While I was at Montreal Mr. Hughes requested that I contact Carter Burgess and invite Mr. Burgess and a number of his immediate staff to Montreal to fly in the Britannia.

My understanding of this exercise was that this would give Mr. Burgess and his staff an opportunity to evaluate the riding qualities of the airplane and perhaps with that perspective better visualize the kind of service that we were discussing.

I contacted Mr. Burgess, and he and a number of top people showed up at the Montreal Airport, where they were met by myself and a Bristol representative, taken to the Britannia, and then flown in it. It was a fairly short flight, as I recall it. I think it was possibly an hour and a half, or thereabouts.

On landing we returned to the airport, flew back to New York, had dinner there fairly late in the evening, and went our respective ways.

During this same period consideration was being given to procurement of 1049Hs which is a Constellation type that had a fairly flexible interior. It was also during this period that Viscounts were being considered. I remember a meeting called by Mr. Burgess in his New York [13086] office which was aimed at coming to a uniform position, so to speak, within TWA as to what TWA wanted presumably so that this information could be handed on to Mr. Hughes.

The results of the meeting were summarized and copies of the summary, as I recall it, given to myself, Mr. Burgess, possibly Mr. Leslie, so that we would have a uniform position, and if I recall correctly, considering the various equipment alternates that were available for consideration, it was recommended that we not move forward with the Britannia.

Q Can you tell me, while you are on that subject, who attended that meeting for the purpose of arriving at this uniform position within TWA?

A Well, the only people I recall are Mr. Burgess, Mr. Leslie and myself, although it is possible others were there.

Q Was there a difference of opinion within TWA as to which type of aircraft was best suited to TWA's needs?

A I think there were differences of view as to the relative desirability of various courses or combination of courses that we could undertake. I do not remember any sharp cleavage or arguments.

Q Do I understand you correctly that as a result of this meeting the decision of this group was not to go ahead [13087] with the Britannia, is that correct?

A No, the decision was that we should recommend to Mr. Hughes, as I recall it, that we not move forward with the Britannia.

Q Was that done, was that recommendation transmitted to Mr. Hughes, do you know?

A I am sure it must have been, Mr. Davis. I don't recall specifics here, as to just how or who did it.

Q Was it after that meeting that negotiations with Bristol were terminated, or can you explain to me what then happened?

A I don't remember an act of terminating negotiations. The impression I have now of what happened then is simply that our interest waned, time went by, and it just ceased gradually to become an active negotiation.

Certainly Bristol continued for a while to make efforts to sell the airplanes.

Q Do you recall what views, if any, Mr. Hughes had with respect to the Britannia, as to its desirability from TWA's point of view?

A Well, the impression I had at the time, Mr. Davis, was that Mr. Hughes was very seriously interested in exploring all possibilities to determine feasibility of moving forward with the Britannia procurement program.

[13088] I would certainly view this as a serious, earnest effort. As to what was really in his mind in summary

fashion at any one point, I don't think I could say. I had the impression that he was quite interested in going that way. He certainly knew how to ask a good many perceiving and detailed questions on the airplane, the general situation.

Q Can you tell me approximately when it was that this decision was made by this TWA personnel you had identified not to move forward with the Britannia?

A As I recall it, the decision not to recommend the Britannia was fairly late in 1957, but I really can't be sure of the exact time.

Q Did any domestic airline in the United States in fact procure Britannias?

A I don't believe any were delivered to any domestic airlines, but I think at least one and possibly more had at one time ordered Britannias. I think Northeast was one of these. This would bear some checking. It is possible that there is one other one, but I can't be that definite now.

Q Do you know what happened to those orders?

A Cubana did, but I do not consider them a U. S. airline.

Beg your pardon?

Q Do you know what happened to these orders that were [13089] placed by other airlines?

A Not except to the extent that I indicated earlier.

Q You say that these Britannias became a red hot issue during Mr. Burgess' regime, but that prior thereto they also had been considered.

Can you identify a prior period when they had been seriously considered and abandoned?

Mr. Williams: Seriously considered?

Mr. Davis: Yes.

A Well, by "red hot issue" I meant it was an earnest and serious negotiation that called for final decision one

way or the other. I don't recall any of the earlier reviews or investigations having gotten to that point.

[13090] Q In other words, is it fair to say, then, that from approximately 1952 the possibility of acquiring the Britannias was being explored more or less continuously with varying degrees of interest in their product until it reached a point that you have described in greater detail during the Burgess regime—

A No, I don't think it was explored more or less continuously. I think we had the fact that the Britannia would probably exist and then later did exist in mind through this period, and at times, when something new came up, new documents were received, new information became available, then we would give that some additional consideration.

Bristol certainly could have made specific offers that I don't at the moment recall from time to time.

Q What was your personal recommendation in this meeting with Mr. Burgess and others?

A Well, I can't be absolutely sure at the moment. I remember being concerned about the difficulty that I felt TWA would probably encounter in introducing or planning for the introduction of too many new types of airplanes simultaneously. If we procured Viscounts, and also procured Britannias, at the same time were preparing, which we were, to some extent, at least, for the intro- [13091] duction of jets, it seemed to me that we were probably going to extend our organization beyond the reasonable point that it should be extended, and that we might not do all jobs as good as they should be done, whereas if we undertook a less ambitious program than trying to do all things, we would be far better off.

In a moment it may come to me, but I don't recall specifically where I put the Viscounts in relation to the Britannias and the Hs and other things that were being kicked around at the time.

Additionally, I remember at one point, when we were considering the forecasted maintenance and overhaul costs, I recommended, as a result of inspecting the airplane at Montreal, that for planning purposes we should double those costs. I recall not being favorably impressed with many mechanical aspects of the airplane from the standpoint of cost of maintenance.

Q Without trying to recall what your personal recommendations were, can you describe or identify what the reasons were for the conclusion which was reached at that meeting?

A Well, my difficulty is in specifically recalling all of the conclusions reached at the meeting, which I seem to be unable to do, Mr. Davis. Some of them were [13092] by nature, contingent on other conclusions.

As I recall it, the nature of it, and I don't recall the specific, was, well, if Viscounts are in fact procured, then Britannias should not be. It was more this kind of thing rather than simply that under no circumstances, as I recall it, should the Britannias be procured. But I don't recall exactly what came out of it in detail. The gist of it was that we felt it was better to forego the Britannias, as I recall it, as a broad assessment of one of the broad results of the meeting. I just don't recall the specifics.

Q And then proceed more actively with respect to the Viscount, or was it a decision to abandon all of them?

A Well, as I recall it now, the Viscount program was still active, and it was expected that would continue to be active.

Q Is Bristol still making offerings of a type of aircraft to the domestic airline industry?

A Yes, they are. They are building a twin-engine air bridge type airplane. I don't know of any airlines over here, though, that have procured it. It is in use in Channel services, and I believe a few other areas.

Q Have you completed your description of both the relations of TWA to Bristol and the scope or nature of offerings which they made of commercial transports to [13093] U. S. airlines?

A Well, I can't say I have stated every particular, but I have tried to give you the evolution, if you like, of our relations with Bristol.

Just for example, I recall that Bristol did report having had discussions with certain members of government, I think there was some committee in Commons that was involved, with respect to production problems that would be imposed on Bristol by its other commitments. Bristol had suggested that a joint meeting be held with the government to help sell this plan, but we chose not to take that step at the time it was suggested.

In fact, we didn't take the step at all.

From time to time, in addition to looking at the airplane strictly from TWA's point of view, we looked at it in terms of its—in terms of what it would probably do for others, and then what that would do to us.

As I mentioned earlier, part of the objective of the negotiation with Bristol was to find a way to proceed without requiring much cash.

As I recall it, although I do not recall the particularity, part of the reason Bristol had for contacting the government was to make funds available for the program, and that Bristol felt to better do this it [13094] would like to have some tangible evidence of interest, either a personal appearance, a letter, or something, and to my best recollection, it got no such tangible evidence.

Q You referred to production problems at Bristol. Those were production problems in relationship to available financing?

A Well, at one time part of the airplanes that Bristol were talking about making available to Hughes and TWA

were airplanes or [sic] order by Scottish Clan. While I can't be certain at this time, I think Bristol felt the need for mending fences, if you like, ahead of time, with respect to releasing airplanes for this purpose.

I am sure they had discussions with Scottish Clan, and the exact degree to which this may have gotten into discussions at a government level, I can't be certain now, but I have the impression that it probably did.

Q Can you identify the Scottish Clan to which you were referring?

A Not except that it was an interest that had ordered a fairly small number of Britannias.

Q Were the financial resources of TWA at that time a factor in the decision or conclusion which was reached?

A Well, this would have been primarily a question that I would not have answered to from a management point [13095] point.[sic] of view. This would be a question Mr. Leslie would have, I suppose, been expected to take a position on with Mr. Burgess.

I have never known a case yet, when ordering equipment, when finances weren't an important consideration.

[13096] Q What I am trying to determine is whether or not, to your knowledge, the financial resources available to TWA at that time were a major factor or consideration which was discussed at this meeting attended by Mr. Burgess, Mr. Leslie, yourself, and others.

A Well, I can't answer it, Mr. Davis, because I don't know what was made available or what would be made available either through TWA or through Hughes to TWA or what. This is an area that I didn't directly work with.

Q What I am trying to establish is whether or not this decision which was made at this meeting which you have previously identified, whether it is your understanding that the decision was predicated upon factors other than the availability of financing to TWA from whatever source.

A Well, I am quite certain that there were factors considered besides financing.

Q I understand that. I am trying to determine to what extent available financing or the willingness of the Tool Company to provide the financing or to commit its credit was a subject of discussion at this meeting or meetings at which the decision that you have described was made.

A I don't recall specifically.

Q I am interested in another area involving Bristol, [13097] Mr. Rummel.

You testified at one time that Bristol originally anticipated a delivery schedule which you felt they might not be able to keep.

Can you describe what the facts were in that regard, what was it that Bristol originally anticipated being able to do, and what in fact developed?

A I don't recall the schedules now, Mr. Davis. I recall, in going through the Bristol factory, having this in mind, and it was a sort of a personal evaluation, if you like, that as a result of what I saw, and as a result of the discussions I then had with them, they could not reasonably be expected to meet the delivery schedule that they were talking about and planning on. And by "delivery schedule," I am speaking now of the production of airplanes to their customers.

Q That is what I am talking about.

A Later on the delivery prospects were again upset because the Britannia caught, so to speak, some backwash from the Comet program. As a result of the investigations that followed the Comet disasters, the British Government, acting, to a fair degree, I believe, in concert with industry, laid down some criteria which required extensive re-evaluation and retesting of not only the Comet, but [13098] also the Britannia. Now, this in turn caused additional delay in producing Britannias.

Q Can you identify or describe the nature of that delay; was it a delay of months, a year?

A Well, I can certainly give you my recollection. I would be hard put to prove it at the moment. But I would say—I have the impression that the Britannia was delayed an additional year or possibly a year and a quarter, or thereabouts, as a result of the additional testing and re-evaluation, re-engineering and modifications that came out of the investigation of the Comet and the reinvestigation of the Britannia.

Q By reason of some mishap which had occurred?

A Because of the Comet disasters. I am not aware of any mishaps on the Britannia that called for this.

Q Now do you think you have adequately described the nature of the offerings made by Bristol and the relations of TWA to Bristol?

A Well, as I said, I am quite sure Bristol approached TWA after that sequence, but I seem to draw a blank right now as to what it was.

Q Have you fully and adequately described the participation of Mr. Hughes or the Hughes Tool Company or any representative of the Hughes Tool Company in that relation- [13099] ship?

A Well, to the extent that I presently recall it, we did not lose sight of the Britannia, it became a competitive factor in the Atlantic.

Q I am referring to the part played, if any, or the extent to which a part was played, either by Mr. Hughes or the Hughes Tool Company or any representative of the Hughes Tool Company.

A Well, that is all I recall at the moment, Mr. Davis. I am quite sure that we discussed the technical features of the airplane from time to time in the perspective of jet developments, what could be learned from it to be re-applied, and that sort of thing, but I don't remember any specifics.

Q The next manufacturer that I have listed is Short-Harlan.

A Yes. It has proposed primarily, as I recall it, cargo aircraft in various sizes from time to time.

Short-Harlan used to be Short Brothers, I believe. It is currently promoting, if you like, the use of a fairly sizeable freighter that it has under development.

This was not a particularly active relationship, and still isn't, although we did receive information from them from time to time and would talk to them as they passed [13100] by.

Q Can you identify for me the period of time involved when they would give you information from time to time as to what they had to offer?

A The only thing I recall now is in fairly recent years, but I really — I can't be sure.

Part of the reason for my confusion may stem from the fact that the British aviation manufacturing industry has been reorganized several times, and I am not entirely clear on the relationship of each of these predecessor companies, but as I recall it, it was probably primarily from, oh, 1959 or 1960 on, and then only on a very intermittent, sporadic basis. We didn't see anything that captured our interest to the extent that it would have called for more than the effort we put forth.

Q What they had to offer was limited to an aircraft for cargo transportation exclusively?

A I think so, although I seem to recall that at one time they had a double-deck airplane or a huge airplane in which a second deck could be put which could house many passengers and which could be operated as a combination airplane or as a full passenger airplane or as a full cargo airplane. But I may be confusing this offering with another company, but I don't think so.

[13101] Q Was what they had to offer ever discussed, to

your knowledge, with either Mr. Hughes or the Hughes Tool Company or any of its representatives?

A I do not recall discussing the Short products with either Hughes or the Hughes Tool Company.

Q Would it be fair to say that your interest or the interest of TWA in what was being offered by Short-Harlan did not justify taking it up with Mr. Hughes or the Hughes Tool Company, is that what the facts are?

Well, I think that's a fact. Whether that was the reason that it wasn't discussed, I don't know. Frequently Hughes would inquire into things that I never raised at all. I don't recall discussing this particular thing with him.

* * *

[13102]

* * *

Q Was there anything which has occurred to you since you began testifying here which you would like to modify or change?

A No.

Q The next manufacturer which I have on my list is Sud Aviation, or Aviation Sud—whichever you prefer.

A I visited the Sud people in Paris and the Sud factory at Toulouse sometime before the first Caravelle flew.

Q When was that?

A Probably in 1952 or 1953. I am not positive. I was [13103] taken on a tour through the facility, and had somewhat tedious but interesting but technical discussions with their engineers—tedious because of the language problem.

Generally I became familiar with what they were doing, and the status of the project, and also the Sud facility, as well as their plans for producing the Caravelle.

Sud from time to time would send specifications and other descriptive data pertaining to the Caravelle project to my Kansas City office. I might say this was a particularly

intriguing airplane design because of the engine location.

Part of the purpose of the visit was to try to establish as best I could whether or not Sud appeared to have the capability of developing and producing an airplane in this category, and in direct competition with others with whom we had been dealing.

The Caravelle was ordered by Air France who received the initial production lot, but additionally was sold to Air Algiers and a number of other European airlines.

Sometime later a Caravelle was flown across the Atlantic and flown on demonstration tour pretty much throughout the United States, and if memory serves correctly, touched a certain number of countries of South America.

This tour was a highly organized tour on the part [13104] of Sud, involving demonstrating the airplane to most of the major airlines, but additionally in promoting the general cause of good U. S.-French relations. I recall being told at the time that the cost of the project was being shared by Sud and the French Government, although Sud is in fact primarily owned, I believe, by the French Government.

In making arrangements for the demonstration in Kansas City, Sud had been in touch with my office. I arranged for the handling of the demonstration with our operations department, and also arranged for our publicity people to work with the local Chamber of Commerce and with Sud towards setting up various meetings with town people that Sud wanted to meet with. This was a number of months in advance of the actual demonstration, as I recall it. I had the impression that this had been done elsewhere by Sud.

The airplane arrived at Kansas City, and was demonstrated to two or three plane loads of TWA personnel in combination with town officials and other prominent citizens that Sud had invited and who had accepted. I went on one of the flights and was tremendously favorably impressed

with the comfort of the airplane from the passenger's point of view.

Sud advised that only two non-Sud pilots had been [13105] cleared by Sud management to fly in the airplane. One was Charlie Lindbergh, and one was Mr. Hughes. They advised they wanted to demonstrate if at all possible the airplane to Mr. Hughes.

I got in touch with Mr. Hughes. I don't recall whether I left word at the Hughes' office or whether it was in the course of another call, but I recall advising him of this, and indicating my belief that the airplane had strong passenger appeal, although I recall indicating I wasn't then sufficiently familiar with the mechanical detail of the airplane to comment on the practicality of the system's structure, and whatnot.

It was either then or in a subsequent call which would have been approximately at that same time, Mr. Hughes requested that the airplane be flown to the Hughes Aircraft airport at Culver City so that he might inspect it and fly in it. I approached Sud with this in mind, and was able to report back to Mr. Hughes in due course, again in a fairly brief interval of time, that Sud was willing to fly the airplane to Los Angeles, and that in order to make it available, it was willing to readjust and rearrange its demonstration schedule to the extent that might be desired, although they hoped it would not require much. I think they planned to have the airplane available one day or a [13106] day and a half, and sandwich it in, so to speak, with a minimum of modification to the Sud demonstration schedule.

There were numbers of conversations with Mr. Hughes, with me sort of being a middle man between Hughes and the Sud flight crew, during which recommendations were given to the flight crew as to how to route the airplane to the coast. Mr. Hughes seemed to be concerned with a tornado activity and possibilities of hazard from some recent atomic

tests, and was anxious that the plane be flown along certain routes to the west coast.

I did not accompany the airplane to the coast. However, General Tessier who is the U. S. representative for Sud, and others in the Sud party did. I recall he was joined there by Sud's treasurer. After arrival, the airplane was inspected by people from the aircraft division of the Hughes Tool Company—Ray Hopper's outfit. I don't recall at the moment how long the airplane was in Los Angeles, but I believe it to be in the order of a week to ten days, or thereabouts. Sud reported that Hughes did not fly the airplane. That he was indisposed at the time. That their contacts had been with Mr. Hopper primarily. Before leaving, however, either Tessier or the treasurer did talk by phone with Hughes.

As I recall it, Sud was finally forced to put the [13107] airplane back into demonstration, and flew it from that area.

Sud had offered the Caravelle and it had outlined certain delivery positions for some quantity of aircraft. It became my lot to try to improve these delivery positions through negotiation with Sud. As I recall it now, Sud had plans to expand its Toulouse assembly facility, and at that time Sud was manufacturing components in a number of French facilities.

After review, Sud gave us what appeared to be the best deliveries that it could offer. These still didn't seem to be quite good enough. As a result of a conversation with Hughes, we undertook on an exploratory basis an investigation of whether or not airplanes could be delivered sooner if they were manufactured by TWA or Hughes, rather than if they were manufactured by Sud.

To understand this, it is perhaps well to recall that Sud had commitments for some time in the future at this time, which tied up their deliveries for a while. The specific plan that was explored was, might be characterized as a

backward or reverse approach to production. Instead of starting by manufacturing detailed parts, combining these into sub-assemblies, and then assemblies and then finally into an airplane, the idea was to start as nearly [13108] as possible with the major components, possibly first joining a wing with a fuselage, to a landing gear, to nacelles, these all being imported in the beginning, and described in the thought that we were pursuing.

Then on the possible basis that perhaps Sud to supply certain components in the beginning, where they might not be able to provide completed airplanes because of facility limitations, the production line over here would gradually be expanded in depth to assemble more and more separate components, and finally if the quantities of airplanes justified, to back into the manufacturing business.

The discussion was sufficiently serious for Mr. Hughes to request that I ask Carter Burgess not to dispose of an overhaul facility that we were moving out of in Kansas City at the time that we were going to release it back to Kansas City, Kansas, the thought being this might be the initial site for the assembling of airplanes in the event all this worked out to some advantage.

[13109] The reason, as I discussed it with Mr. Hughes, for the Hopper inspection of the airplane was that I felt the need for people somewhat more currently familiar with some of the manufacturing details than I was to take an independent look at it, and either support or disagree with the tentative conclusions that I had arrived at on this point.

There were numbers of discussions. The end point of it all was that we had to conclude that considering the time necessary to establish a manufacturing organization, whether it came partly from TWA or wherever it came from, whether it was a division of TWA or whatever it might be, would take time—more time than we probably had—and additionally, Sud, on exploring to greater depth

than they had at that time its ability to manufacture components in these various factories throughout France, came to the conclusion that it could not, even though it wanted very much to establish a facility in the U. S.—came to the conclusion that at that time it could not expand its production of components sufficiently rapidly to accommodate a second production line in the States, at least to the point that it would accelerate production of the Caravelle.

This particular approach was abandoned after what I would view would be a very thorough exploration, such [13110] as I have described briefly.

Our relations with Sud were always good. Sud kept in touch from time to time concerning delivery positions, orders to others, and so on.

Many of these contacts were through General Tessier, although occasionally others would be involved.

Considerably later on the Douglas Company and Sud became associated with resepct to the Caravelle. During, I think it was 1959—I am not sure—United Airline purchased a fleet of 20 Caravelles of a somewhat later model than we had looked at earlier. These were delivered, I believe, during 1961.

The Caravelle, during this intervening period, became established as a very popular airplane in Europe. It was a comfortable airplane that the passengers seemed to enjoy. The Caravelle was and is a smaller jet with limited range characteristics, and appeared to be of a size that could nicely complement TWA's fleet of 880s and Boeings.

During 1961 both Douglas and Sud were in touch with TWA, and I undertook to see what sort of a deal might be worked out with Sud for airplanes, all with full knowledge and concurrence of my superior, Mr. Tillinghast. The objective here was to come up with a deal, if possible, [13111] that would require a minimum cash outlay, or if possible, would permit generating what cash might be required from the airline.

All in all Sud was cooperative. The deal went through a number of gyrations, and so did the airplane configuration, at least in some particularity. It wound up with General Electric power plants, for example, instead of Rolls-Royce. It was a slightly longer fuselage than, I think, United had. It had some aerodynamic refinements.

This airplane was slated for production commencing in January of 1963.

While the contract was signed for the procurement of 20 aircraft, it was allowed to expire.

Additionally, Sud have talked about supersonic transports, particularly recently. I have had occasion to review some of these plans with Satre and outside of Sud having discussed now and then whether or not it should continue the Caravelle as it was, or build a bigger Caravelle, or smaller Caravelle, and outside of discussions of that character, I think this would be my nutshell recollection at the moment.

Q Why was the contract for Caravelles allowed to expire in 1961?

A I may have misled you. I don't know that it [13112] technically expired in 1961. It has since expired. I think it was in 1962 when it technically expired.

Q I meant the arrangement that had been negotiated in 1961.

A As I understand it, the primary contingency that wasn't metrelated to financing.

Q Financing available to TWA?

A Yes.

Q Have you fully described the participation of Mr. Hughes or of the Hughes Tool Company or any of its representatives in connection with the dealings with Sud?

A As nearly as I can recall it, I might say Mr. Hughes evidenced very keen interest in this exploratory process I described of seeing what could be done to accelerate pro-

duction, and then also once TWA's requirements were reasonably satisfied, there may be a combination with that to possibly offer the airplane to others.

That is all I recall at the moment, Mr. Davis.

Q As I understand your testimony, Sud first approached TWA or you in around 1952 or 1953, is that correct?

A Yes. As I said, I am not entirely sure of that timing, but it was about that time. While visiting some of the factories in England, I extended the trip and [13113] dropped in first at Paris for an afternoon's discussion, and then went on down to Toulouse, and returned to Paris for a half hour's discussion, and then left back for the States.

Q At that time Sud was offering a Caravelle?

A Well, it may be putting it a little strong. I think at that time they intended to offer and declared their intentions of wanting to sell the airplane.

As I recall it, they were most eager to try to penetrate the American market with this airplane, and at that time—I didn't know it when I went down there, but I soon learned we were the first airline to visit the Sud facility from the U. S.

Q What was the type or category of aircraft that Sud indicated it contemplated offering to the U. S. airlines?

A Pretty much like it is right now.

Q A jet?

A Oh, yes. I thought I described it the other day. It is a twin-engine.

Q I wasn't sure at that time in 1952 and 1953 they were planning and offering or intending to offer that kind of aircraft.

A Yes, sir. It is the same Caravelle. A Caravelle has always been the Caravelle. It is essentially the [13114] same. There have been increases in the power of the power plant. There have been changes in fuel capacity and other

refinements in the airplane, but essentially, if you were to look at two airplanes on the field, one made then and one made now you would immediately identify both as Caravelles.

Mr. Williams: What was the passenger load of the Caravelle?

Mr. Davis: I was going to ask my question a little more broadly. I was going to ask him to identify, if he would, the type or category of aircraft with which the Caravelle would be competitive.

A It would have been competitive with the Lockheed Electra.

Q Electra?

A Yes, and airplanes contemporary with that.

Q You identified it as a short-range aircraft?

A Short to medium, yes.

Q Can you identify the category of short to medium-range aircraft that would have been jet aircraft, which from TWA's point of view at least, were competitive for consideration with what was contemplated by Sud?

A As I recall it, the Caravelle had somewhat more range than the Viscount, but there were a number of route [13115] segments where certainly both could serve and both were contemporary. The Viscount preceded it, but they could have appeared at that time.

Q In the category of jets, can you identify the types of jet aircraft which are or were contemplated to be competitive with the Caravelle?

A Because of economics the airlines tend to want to fly jets on as long trip lengths as they can. However, due to route necessity or availability of jets, or various reasons, a number of them fly, even bigger jets, on fairly short hauls. To the extent these aircraft would have been flown on the hauls for which—the length of hauls for which the Cara-

velle was suitable, to that extent they would have been competitive.

Q Competitive with what?

A With Convairs.

Q Convair 880s?

A Boeing.

Q Which one—the 131?

A I would say 131, or if you look at the Caravelle, say an airplane good for seven or ten years usage—let us say ten years—had we procured it, it would just be coming in and would be good for a long time.

I would include all these airplanes which would [13116] fall route-wise into the category the Caravelle would fly, and that would include the 727, for example.

[13117] Q What I am interested in knowing is what was being offered in the sense of interest to manufacturers and manufacturing jet aircraft in 1952 or 1953, or at the time Caravelle first approached you—what choice, if any, did TWA have for a comparable type of jet aircraft?

A There were none available in 1952 or 1953. At that time, as I said, the first airplane was just being built in the factory. It was at an appreciable period that it flew and still later period that it was placed in production.

So there wasn't any availability then, and it would have been premature for any airline, other than a state airline to have entered into heavy commitments. It would have been a first-class gamble, and then some.

Q What I am trying to understand is this: Were there other manufacturers, domestic or foreign, which at that time, namely, when Caravelle was discussing with you its proposed program—what other aircraft manufacturers were offering or indicating an interest in offering a comparable jet aircraft. By comparable, meaning one that would have performed substantially the same service for TWA that the Caravelle might have.

A As I said, I am not real certain of the 1952 or 1953, I suppose it might have been 1953 or 1954. As I [13118] recall it, the Caravelle emerged somewhat after the initial Comets were produced. The Comet was a long-haul airplane. It was also represented as a good medium-haul plane.

I suppose in a certain sense it could be considered competitive to the Caravelle, although I think we looked at the Caravelle more as a short-haul airplane.

Q As a short-haul jet aircraft, what I am trying to find out, Mr. Rummel, is whether at that time, whether it be 1952 or 1953 or even 1954—at the time the Caravelle was trying to interest or evoke an interest in TWA for its product, what other manufacturers were offering or programming or planning for a similar short-range jet aircraft.

A I don't recall any at that time except to the extent the Comet was short haul. As I said the other day, AVRO Canada did produce a small four-engine jet which was not too far removed from the Caravelle in terms of size, but that was quite awhile before this.

Q At that time were there any U. S. manufacturers, that is, Convair or Boeing, or Lockheed or anyone else, who were approaching the airlines with a program of manufacturing a comparable or competitive aircraft which might be competitive to what Sud was offering?

[13119] A We had numbers of discussions from approximately 1946 on, and I think some clear back in 1945, with a number of U. S. manufacturers on the possibility of their producing jet airplanes.

Back in 1945 I had laid down and run a preliminary performance analysis on a small four-engine jet. I discussed this with Jack Franklin. We discussed it with Frye, and as the next step we discussed it with Douglas, and we found that coincidentally Douglas had laid down an airplane that was certainly not identical, but very similar to that.

I think in retrospect now both of them representing about the same state of the art at the time—performance figures were compatable, and so on.

Mr. Franklin indicated that both Mr. Hughes and Mr. Frye were interested in pursuing this further. We did have discussions with Douglas, but finally concluded that the state of engine development was just premature to move on into jets at that time.

Martin approached us at the time Mr. Franklin was still there with drawings of various jet possibilities. They had preview drawings of various sized machines. So did Convair. Both Martin and Convair at that time had a development contract with the military, and were [13120] developing experimental jet bombers.

Mr. Franklin and I made one trip to San Diego during which we looked at the bomber at the shops while being constructed. We considered technical aspects and looked further at some of Convair's drawings.

I would say that both Martin and Convair at this particular time were exploring possibilities, rather than coming in with contracts and dripping pens.

We also gave consideration to other possibilities of having jets developed. One was a commercial version of the YB-60, which was a large eight-engine jet variant of the B-32 built by Convair.

By way of identification, I recall it as the machine that competed with the initial B-52 plane. I remember being asked by Mr. Hughes to discuss this possibility, or rather say to explore the plane that Convair had with respect to feasibility, which I did by visiting Fort Worth, and talking to their structural and performance engineers. I later was asked to visit Mr. Odlum at his ranch and discuss this with him, and I believe Mr. W. C. Rockefeller was there at the time, if I recall. He was there at several such meetings.

Q Was this at the time when Mr. Odlum was chairman of the board of Convair?

[13121] A I am not certain, but I think so.

Q It was in connection with Mr. Odlum's association with the management of Convair?

A That is my recollection, yes.

Q I am sorry I interrupted you.

A In addition to the Douglas I mentioned, Douglas also had other proposals from time to time which did not, as I recall it, represent decisions to produce on Douglas' part, but simply represented queries of interest worth exploring with airlines.

I might say that this was a Douglas custom. When we were negotiating with Douglas, that is during the period of time we were negotiating on DC-6s, DC-7s, and DC-7Cs, Douglas from time to time presented its views on various types of airplanes. It included Douglas Sky Bus, which was a non-jet, and some other non-jets that had a propeller aft airplane, and also included a number of small jets, as I recall it, from time to time, but I don't recall it particularly now.

I mentioned the other day our exploration for a jet after the early serious Caravelle discussions, and I take it your question is from that time back now.

I think I mentioned that Convair had come up with a few previews of its bomber developments. That [13122] is all I recall now. A great deal went on during that period, and it covers a great deal of time, Mr. Davis, and I really can't be certain of remembering everything. I am telling you all I remember, but there must be more to it.

Q You don't need to apologize, Mr. Rummel. But you do recall the time when Sud approached you or TWA with this contemplated Caravelle program, and you do remember the time when Sud had this model aircraft that they were demonstrating. You remember that time, whatever year it may have been?

A Yes, I just testified to that.

Q At that time, whatever year it may have been, I am

interested in knowing what was Boeing offering, if anything, comparable to what Sud was offering.

A If I didn't make it clear, the demonstration I referred to was long after 1952. That was a visit to the Sud facility, and the demonstration—I am not certain of the exact year, but I am sure there would be a record somewhere—it was probably 1954, maybe 1955.

Q Taking it either at the time that Sud first approached you with a plan or program on paper, and the time that they were trying to arouse interest by this model, bracketing the period, therefore, from 1952 to [13123] 1954, and without any particular emphasis on the particular year—at this point it is not important—I am trying to find out what competing manufacturers of aircraft were offering, if anything, to TWA or the airline industry in the United States, as an alternative aircraft to what Sud was offering? Do you follow what I am trying to say? Did they have anything that they were offering at that time?

A I would say again the Electra.

Q On pure jets, I am talking about.

A Pure jets only?

Q Yes.

A When the Caravelle and Comet first developed, I don't believe there were any U. S. manufacturers offering jets on a serious basis. They were simply exploring possibilities.

Q In other words, Sud had, so to speak, advanced the art on jets for the short or medium range jet, at least?

A Yes, I do think Sud definitely advanced the art. I don't think that is the reason for it, and I don't think that is the reason why England led us in the jet picture. I think they got a head start while we were still fighting the end of the war, to be frank about it.

[13124] Q You referred also to some engine deficiency or available engine deficiency, and that is what I am trying to understand.

A I ought to elaborate on that. I meant economic deficiency.

The Special Master: Let us take a short recess. (Whereupon, a short recess was taken.)

[13125] By Mr. Davis:

Q Am I correct in understanding then that Boeing was not offering to the airline industry a comparable aircraft? I am referring now to the time when Sud was approaching TWA and possibly other airlines in the period 1952 to 1954.

A Boeing was exploring possibilities of offering aircraft during this period. As I recall it, it didn't decide to make the specific offering until later on, and when it did, it was for an airplane larger than the Caravelle.

Q What I am trying to identify is whether or not Boeing at that time was contemplating offering a jet aircraft more or less competitive to the Caravelle, or if you prefer, tell me what they were contemplating at that time.

A I couldn't say what Boeing was contemplating at that time. The impression I had is that Boeing was trying to decide during that period what it should offer, if anything.

Q They had not reached the point in their plan or program so that they were approaching TWA or other airlines, is that right?

A No, that isn't right. Was approaching in what respect? They were in touch with us from time to time, as I explained earlier.

Q Trying to find out what you wanted?

[13126] A To get our reaction to what they were doing, or to simply keep us appraised of what they were doing to the extent they wanted this appraisal.

Q What did they tell you they were doing? We will approach it that way.

A In 1952?

Q The year is not important to me. I am interested in what they were doing, or what were they offering to do at the time you were being approached by Sud? I am referring to the period when Sud first approached you with a program on paper which eventuated into a demonstration model for the purpose, subject to correction,—for this purpose let us assume it was the period 1952 to 1954. In other words, Mr. Rummel, I am trying to get you to describe for us what the situation was from the point of view of an airline that was interested in committing itself in one way or another for jet aircraft.

A As I recall it, I am a little vague in the timing, but I believe in that period of time, Boeing was constructing its prototype jet tanker. This was a slightly smaller airplane than was finally produced for the airlines.

Q That was a prototype of the what—of the 331, the 131, the 727? You must bear in mind we are completely uninformed in the field.

[13127] A As I recall it, it was a Boeing Venture unsupported by military contract. It was a prototype tanker-transport. Boeing subsequently—it was a four-engine jet equipped with early J-57 type engines built by Pratt & Whitney, as I recall it. Boeing subsequently received an order for jet tankers for which it also built prototypes. These were larger than the initial prototype, which I believe Boeing called the model 80.

I think it was during the time that you referred to that Boeing had that under construction, and as such it would have represented Boeing's best thinking as we would have understood it concerning the state of their developments. The airplane was considerably bigger than the Caravelle.

I might say too that in a certain sense the tanker program that grew out of the model 80 formed a basis for the commercial program. For example, Boeing in resolving the fuselage size gave a careful eye to commercial requirements

so they could build the same basic structure for both airplanes.

Q. Are you finished?

A I am trying to think, Mr. Davis, whatever else I can that might better answer your question. That is certainly all that comes to mind right now.

[13128] Q Now will you describe what was contemplated or offered by Douglas at that same time, or during that same period of time we are talking about, namely, from 1952 to 1954, or the time that Caravelle was being offered by Sud?

A I don't think the model 80 goes back as far as 1952. I am just not certain of the date. It would probably be more towards 1953 or 1954 possibly.

As I recall it, Douglas was still pretty well occupied with the DC-6B and DC-7 production, particularly during the latter part of that period. I don't recall exactly when the DC-7 appeared. I don't recall activity to any great extent along this line from Douglas, although they may have occasionally dropped in with some thoughts on jets.

Lockheed did look at jets fairly extensively, as time went on, from that time.

Q Is it fair to say that at that time Douglas had not developed any particular program of looking towards an offering of jet commercial transports to domestic airlines?

A I am a little vague on that point. I know later on they were giving active consideration to building and actually offering airplanes, and I did practically nothing with them, as I mentioned the other day. During this particular period we gave consideration to some piston air- [13129] planes they were offering.

Q Which kind of airplanes?

A Piston. My recollection is that they were pretty well taken up with the piston airplanes, and that they were not anxious to move into jets.

Q They weren't interested in pioneering a jet commercial transport?

A My recollection is that they had the piston market, certainly not to themselves, but they had a big piece of it. The airplane was still being ordered. It was in heavy production, and they saw it continuing for some time. As I recall it, not too much was going on, as I knew it, at least, as I recall it, from Douglas with respect to jets.

Before then they looked particularly to the smaller jets that I mentioned earlier, although I would not want to go on record and say that they didn't show us previews a time or two. I don't recall the specific instance when they did.

Q How about Lockheed? What were they doing looking towards jet aircraft?

A The first Lockheed jet transport that I was at all familiar with that I can recall was during the time Lou Koepnick was in charge of staff engineering.

That was a four-engine jet. As I recall it, the [13130] engines were essentially mounted in the fuselage. I would not recall it an offering as such. As I recall it, they were doing exploratory work in the hopes of selling the airplane to military or the airlines. Lockheed went through a series of design studies, including at one time a series of mock-ups, that is, where they constructed rough mock-ups, and some Lockheed people and a few TWA people — it was quite early in the so-called jet age.

Q Is it fair to say that at that time they were not showing any particular aggressive interest in developing or pioneering a commercial jet transport for the airlines?

A I would say the impression as I recall it now that I had then was that Lockheed engineering was quite aggressive. I am not sure I could say that of Lockheed's management. I would not say it wasn't either. I just don't recall having that impression.

Q In any event, at that period of time Lockheed was not contacting the airlines with a view of developing an offering?

A Oh, no. I would say they were.

Q They were?

Will you describe what they were doing, what they were offering?

A I would say at that point they had mock-ups in [13131] existence demonstrating what they had in mind with respect to the size of the cabin, the engine installation, cargo holds. I believe they had a cockpit mock-up, and they had numbers of airlines in — not just TWA — to look at these, to offer comments, suggestions. I remember Hall Hibbard said he would sure like to get one or two airlines lined up so they could get going. I would have to say that Lockheed's engineering personnel — he saw an aggressive intent to interest us in moving forward with the jets. I can only assume that they were doing the same thing with respect to other airlines. I don't know.

As I say, the airplane or airplanes they were talking about through the passing of time became a series of proposals. By and large they all, as I recall it now, had engines mounted in or just off of or half in the fuselage at some point along the length of the fuselage. This varied too as time went on.

Q Did this aggressive intent on the part of the engineering department of Lockheed materialize into something more tangible, or what happened to those plans of Lockheed? Did there come a point in time when they had something tangible to offer either to TWA or other airlines that you know of?

A As I recall it, Lockheed was unable to sell the air- [13132] lines on the engine installation concept.

Q Were they successful in developing a military jet aircraft?

A None in this category were built.

Q Will you then likewise describe what the situation was at Convair at that time. I am now referring to this period 1952 to 1954, during which Sud was trying to arouse an interest in its product?

A With respect to jets, it may have been in late 1953 or early 1954 — again I am a little fuzzy on the timing — a series of meetings were held.

Q Between whom?

A Between the Convair people and myself. The participants varied with the occasion. A number of times Mr. Hughes participated. At least in one case Mr. Rourke sat in with me. These meetings were held in numbers of locations. I remember one at Las Vegas that Mr. Hughes participated in with a number of Convair people, at which time Convair showed drawings of jets that it was considering.

One meeting was held at my home in Kansas City, with just me and one Convair representative — a fellow named Riddler, I believe.

One meeting was held in Seattle. One meeting was held in Washington, D. C., and at least one meeting, or [13133] it may have been two, were held in the Beverly Hills Hotel. I remember Mr. Hughes participated in that meeting.

This exercise with Convair in these days spanned at least a year, and maybe longer. I touched on this the other day. We were trying to come to a design which, as far as I was concerned, would put TWA out ahead. We looked at both turbo-props and jets. We looked at them in combination and singly. We looked at various sizes of airplanes.

The nature of the meetings, as I recall them, that Mr. Hughes participated in was a review of the design, a review of when it might become available, quantities in which it could be produced — the production rate. Usually

during these meetings, I would present whatever views I had as the occasion required, either in reply to something that Convair said, or a query from Mr. Hughes, or whatnot. It was generally informal discussions of what might or might not be a good thing to do.

Q During that same period will you describe what was the nature or type of interest evidenced by Martin relative to commercial jet transports, if there was any evidence of any interest?

A I would say the situation I just described at Convair would cover a period up to probably late 1954 or early [13134] 1955. Now you are asking what Martin was doing between then and 1952, is that correct?

[13135] Q I am trying to cover the field of what was being offered or planned, or what evidence of interest there was on the part of the United States manufacturers of commercial transport aircraft in the category of jet aircraft at the time that Sud was offering or trying to develop an interest for their product, so that we get a picture of what was available to commercial airlines in this initial period of time when jet commercial transports were a possibility.

A Much of what I have described wasn't available in the sense that you could go and buy it. It was something that might lead to something being available. As I recall it, Mr. Davis, during this particular time Martin wasn't offering anything commercially. They went out of the commercial business towards the end of the 202-A and 404 construction period.

Martin had a fairly complete change of management, and as far as I can recall now, made no overtures to us to build commercial aircraft from that time on.

Q Were there any other manufacturers of aircraft that we have overlooked, who displayed any interest in manufacturing or developing a jet commercial transport?

A Taking my testimony as a whole, probably not. Whether I categorically talked about these specific years [13136] in this context, I don't know. So much has been said. I mentioned the Viscount, the Electra, the Comet, the DC-6B and DC-7, the Constellation. I suppose the Convair 340s would fly a segment similar to the Caravelle. They are a piston aircraft, and certainly not of contemporary design, but were available on a contemporary basis. I don't think of any others.

Q To summarize, at the time that Sud was approaching the U. S. airline industry, and TWA in particular, with their program for a jet aircraft, the Caravelle, the situation among U. S. manufacturers was that Boeing had been developing plans for converting a military cargo aircraft to commercial use, and was the most advanced of the others?

A I wouldn't quite put it that way.

Q Put it the way it actually was.

Mr. Williams: He has already testified. I don't think we now have to go through the process of reviewing what the witness said. I don't mind a short question by way of summary.

Mr. Davis: I would like to have a summary of the competitive situation as it existed at the time that Sud made its initial approach during the period 1952 to 1954.

[13137] Mr. Williams: I object on the ground this is repetitious. If he can add something, all right, but otherwise it is a waste of time to go through this again.

By Mr. Davis:

Q I don't want you to repeat what you said. I am trying to get a summarization of what the situation was.

The Special Master: If you can give a summary without repeating what you said, you can do so.

A I wouldn't know how to summarize without repeating, Mr. Special Master. The only thing I was about to say with respect to Boeing was that I don't think it could be characterized as a modification program, but that is drawing a fine line.

Q What decisions, if any, were made by TWA with respect to the course to pursue in connection with the offer being made by Sud?

Mr. Williams: What period?

Mr. Davis: When Sud approached him, the period from 1952, 1954, originally what program on paper?

Mr. Williams: I object to this on the ground that the witness has already been asked when did they [13138] give serious consideration to it. He testified about the consideration they gave to it during the Burgess regime, I believe.

Mr. Davis: I am not in the Burgess regime.

Mr. Williams: We have been through all this.

Mr. Davis: What decision was made by TWA, if one was made, as to what they would pursue with these various manufacturers?

Here we have testimony of this witness that Sud came to them with a potential program.

Boeing was doing what they were doing.

Douglas was doing what they were doing.

I want to know what decision TWA made.

Mr. Williams: I object on the ground that we have gone into this in detail. That the witness has particularized the degree of consideration given to each program. Whether it was preliminary or

serious, the very type of plane—and I have notes here, which if I need to argue it, I could, but I don't think we need to go through all this again.

The Special Master: I have the impression of the testimony that the witness said that during this period of time they considered not offering, but the type, and they conferred with Sud about it, but they [13139] did not take any steps to procure it.

Is that correct or not?

The Witness: That is certainly correct from TWA's point of view.

The Special Master: Isn't that the question?

Mr. Davis: No, sir. I want him to describe how this decision was arrived at, what they decided to do, if anything. We know they didn't get Caravelles, they got something else eventually. That is a record which even Mr. Williams can't question.

The witness testified about Mr. Hughes' interest. He testified about some program with a possibility of TWA going into the manufacture, or the Tool Company going into the manufacture of Caravellas.

What I don't understand yet is what, if any, decisions were being made by TWA management as a result of the situation which he has now finished describing.

In other words, sir, I point out that we had a situation where during this period of time the airline was interested in pursuing some course of action with either one or more manufacturers. I am interested in getting a description from this witness as to what decision was made, how it was arrived at, [13140] who participated in it, and what TWA did.

The Special Master: You may ask him the question if whether or not there was a decision made with

regard to this Caravelle program in the period from 1952 through 1954.

Mr. Davis: May I point out, Mr. Special Master, that this witness is likely to address himself merely to the Caravelle program, if phrased that way, and the Caravelle was an aircraft of competitive potential with other type of aircraft.

What I am interested in at this point is the testimony of this witness as to the decision, if any was made, with respect to which type or category of aircraft, jet aircraft, they were interested in pursuing, or as he previously testified, what they did in order to develop some competition among manufacturers so as to have a choice.

The Special Master: I will consider the other types of planes after you get into this one, and get this buttoned up.

By Mr. Davis:

Q Will you describe, then, Mr. Rummel, what decisions, if any, were made by the TWA management with respect to [13141] this offering by Sud?

A I don't recall TWA management making any decision with respect to the Sud offering. I am speaking now of the decision with Sud that led to the consideration that airplanes be manufactured over here.

Q Who was that discussed with? Was that discussed within TWA, and if so, by whom?

A Not to any appreciable extent at all. It was discussed primarily between myself and Sud, and myself and Hughes, and then to the extent that Sud was able to talk to Hughes about it.

Q What I don't understand is why TWA gave any consideration to the manufacture of aircraft at this period.

A This was essentially a discussion between Hughes and myself, and just what may have been in Hughes' mind at that time I couldn't say. I don't think it would be correct to say that TWA gave any management consideration to the manufacture of aircraft as such. This possibility was explored by myself on behalf of Hughes.

Q What conclusion, if any, did you reach as to the economics or desirability of acquiring some Caravelle jet aircraft as an addition to the TWA air fleet?

Mr. Barr: From the context, may I request Mr. Davis specify who he means by "you"?

[13142] The Special Master: Will you explain by that in which of your capacities you consider you were acting at that time?

The Witness: In a good many cases, Mr. Special Master, it seemed to me the interests were parallel. It would be hard to say to what extent representing TWA and Hughes. At that time I was not a special agent of the Tool Company.

The Special Master: If you think you were acting on behalf of both, just so state.

The Witness: With respect to representation of what might fit the airline, I was reflecting TWA. With respect to the manufacture of airplanes, it was exploratory on behalf of Hughes, and I was not reflecting any views expressed to me by TWA management at all. In fact, this investigation was conducted in almost complete secrecy from TWA management.

The Special Master: To clarify that, I got the impression that the reason that you were considering the manufacture of airplanes, either by Hughes or Hughes Aircraft, or TWA, was to get a better schedule of deliveries. Was that what you meant to convey?

[13143] The Witness: I meant to convey that this was the thought as I can best recall it now, which triggered, you might say, the investigation.

By Mr. Davis:

Q This was part of the development, to clarify for the benefit of Mr. Barr, what you meant.

Now may I have the question in which I used "you," referring to Mr. Rummel?

The Special Master: Do you recall the question?

The Witness: No, I don't recall.

The Special Master: Will you read the question?

(The question was read.)

By Mr. Davis:

Q At that time?

A I don't recall exactly, Mr. Davis. I am just a little vague. As I recall it, it went something like this: Caravelle in my personal opinion was a fine airplane and would make a fine addition to the fleet. The timing of availability was such that the wisdom of proceeding might be held in doubt. I think finally the door was closed by Mr. Hughes to any further Caravelle consideration, the general directive being to do no more with Sud on the project. We would wait for something else.

[13144] Q When was that?

A I can't be certain. It was at the conclusion of the investigation I mentioned that involved taking the airplane to the Coast. While we were negotiating for either the 880, or the Model 18, the Convair, I recall in one conversation discussing the Caravelle. Mr. Hughes stated that he had no further interest even then in the Caravelle. This was some time later.

I must say here too that the Hughes Tool application that went before the CAB to, I think, build airplanes for TWA, I believe it was—my recollection isn't fully clear—but I am a little vague as to exactly when this occurred. I think it was after this discussion on the Caravelle, but I am not sure. I think it was in 1956. Whether we got back into the discussion of the Caravelle then or not, I can't be sure, but I don't think it was discussed with respect to whether we might build.

Q Without trying to identify the year, can you tell us whether this so-called directive not to pursue the matter further with Caravelle took place at or about the time that a decision was made to place an order either with Boeing or with Convair for jet aircraft?

A I am quite sure that a factor that at least I was considering was the probability of early jet developments [13145] here in America. This has to do with the relative timing of availability of the Caravelle versus what we might do in these other areas that I mentioned a moment ago.

I don't recall the specific time sequence. I realize it would help you if I could, but I just don't at the moment. My memory isn't that good, unfortunately.

Q You referred to a request from Mr. Hughes that a model Caravelle be made available in Los Angeles, I believe you said?

A This was the diverting of the demonstration plane from its pre-arranged route from Kansas City to Los Angeles, as I described it for inspection and flight purposes.

Q Can you tell me approximately when that was? If not by a date, at least by reference to other events?

A It was during a summer or fall season. It was not in the winter. But I can't recall more than I did, really.

Q You previously indicated that this concept of possibly manufacturing aircraft, in collaboration with Sud, was for a number of reasons which you have described. That program did not materialize?

A I don't know what reasons Hughes had in mind. I am not intending to so represent here.

[13146] Q I understand that, but that program of manufacturing aircraft, either by TWA or the Hughes Tool Company or Hughes Aircraft, that did not materialize? That did not take place?

A No. It didn't crystalize into a program. In other words, no one produced airplanes. They didn't get to that point.

Q I am trying to get you to tell us what you know about the decision, if one was made, to abandon that project, if you know.

A A decision was made not to move forward. Beyond that I don't think I can say.

Q Can you describe how that decision was made, and how it became known to you?

A As I recall it, Mr. Hughes said so over the telephone. We were having numbers of discussions during that period on various projects—potential projects.

Q Was anything said to you as to the reasons for abandoning the project?

A I think it was primarily relative timing, as I understood it—as I recall it now. I am not clear about that.

Q You also referred to the development of an association of some kind between Douglas and Sud. Can [13147] you tell me approximately when that developed?

A That was considerably later, Mr. Davis.

Q Later than when?

A Than the period we are speaking of. I would place it in the period of around 1959 as a guess.

Q Can you tell me approximately when it was that a commitment was first made, either with Boeing or anyone else, for jet aircraft intended for TWA, which you understood was intended for TWA?

A The first written commitment I recall is the order the Hughes Tool Company placed for eight model 131s.

Q Boeings?

A Boeings. Yes, sir, that is what I understood the question to be, is that right?

The Special Master: That's correct.

A I would have to check, but I believe it was in the spring, probably the very early spring—in fact, I think it was February of 1956.

By Mr. Davis:

Q Can you tell me approximately when a commitment was made with Convair for its jet aircraft?

A During the early development of the 880; I had the impression that was an agreement between Convair and Hughes that Hughes would hold Convair harmless—I don't know [13148] if that is the right legal term, Mr. Davis—but that they would pay Convair up to a certain dollar amount for Convair's exploratory design efforts in the event the purchase contract wasn't finally entered into.

I have a vague recollection there was a similar agreement on the earlier model 18, but I am not sure of that.

The actual order or commitment from Hughes Tool in the form of a purchase contract for 880s, as I recall it, was during September of 1956.

Q Can you give me an idea—

A I should say this too, that prior to signing the contract, there was a short form agreement, I believe towards the spring of that year, which provided something of a framework for the development of the detailed contract, and provided, I believe, that if numbers of items could be agreed upon between us to our mutual satisfaction, then in that event there would be a contract signed later on. It was, I suppose, to be called a contract, although as I recall it now, it was sort of a letter of intent type thing in short

contract form, to some extent, an agreement to a degree later.

I don't recall when that was signed, but I think it was fairly early in the year, and I don't recall [13149] whether the agreement to pay Convair's cost in the event the deal aborted was before or after that. I have the impression now it was before that. Frankly, I am not certain.

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[Testimony — September 18, 1962]

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[13195]

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Q Do you have information with respect to the part played by Mr. Hughes or the Hughes Tool Company relative to the Electra program of Lockheed?

A Well, at one time I recall Mr. Hughes telling me over the phone that he had requested Lockheed to take a look at a jet version of the Electra, and that he was surprised at the configuration that Lockheed came up with. [13196] It did not, apparently, reflect Mr. Hughes' ideas of what Lockheed might have been able to do with this project.

I and my staff had taken very preliminary looks on our own at a jet version of the Electra and had come to the conclusion that the basic design was such as to not really warrant that effort, that is, not warrant a program.

There may have been some discussions or conversations with Lockheed from time to time on possibilities of jet Electras, but I don't recall any specific discussions at the moment.

As I say, this is a possibility, I am not clear, beyond that, as to what you mean.

Q I was not referring to a modification of the Electra into a pure jet. I was addressing myself to what information you have as to the interest shown, if you please, either

by Mr. Hughes or the Hughes Tool Company, in the Lockheed Electra program.

A Well, Mr. Hughes showed keen interest in the Electra program, I would say almost from the time of its inception.

Q Can you give me the period of its inception then?

A I might say, now that I think of it, you focus my attention on this, there was a period of time when I was instructed not to discuss the Electra with Lockheed, but [13197] to wait until—to wait for Hughes' signal to do so.

I remember this because at the time I was not supposed to work on it I was expected also to be able to discuss all its details with Mr. Hughes.

Mr. Davis: Off the record.

(Discussion off the record.)

[13198] A There were numbers of technical discussions with Mr. Hughes —

Q I was asking you for the period, if you can give me it, that troublesome period of time.

A Well, this spanned a large period of time. I would say that interest seemed to fluctuate.

At times we discussed the Electra with Lockheed, at times we did not, at times we simply listened to them, we had discussions with Allison, we had discussions with propeller manufacturers to become more familiar with the design, so broadly it would cover, on an intermittent basis, the time from which the Electra became a project, more or less, up to at least five-year projections on assumed fleet acquisitions made during 1959 for the Tool Company.

Q Was it your understanding that this assumed fleet acquisition was for use by TWA?

A The study I referred to, Mr. Davis, included an assumption given by Tool Company people, as I recall it

now, that there would be a certain number of Electras, and the purpose of the projection was to show what the effect of this would be, along with the effect of operating the rest of our airplanes, on TWA. In other words, this was an overall five-year projection, including in the end pro forma balance sheets and whatnot, including a fleet of [13199] Electras.

I don't think we identified them as such in the report. We called them type Y or type X.

Q But you were requested to make studies as to the economics of injecting a fleet of Electras into TWA's fleet?

A Yes. The study I referred to was one made, as I recall it, during 1959. Before that time we had looked at Electra performance in detail, we had looked at a number of route analyses, and had generally familiarized ourselves with what the economics of the machine would be.

We would compare these projections with similar work we were doing on the jets, and these were discussed with Mr. Hughes from time to time.

Q Do you know whether or not the Hughes Tool Company in fact acquired any Electras from Lockheed?

A Well, some were under guard at Lockheed. I guess I don't know technically or contractually whether it did or it didn't.

Q Do you know whether or not Lockheed ever delivered any Electra aircraft to the Hughes Tool Company or Mr. Hughes?

A I am not aware of any having been delivered to Mr. Hughes. I am sure he flew Electras now and then, but that [13200] is a separate question, I guess.

Q Do you have any information as to whether or not there was a period of time when Mr. Hughes was personally testing the performance of an Electra?

A Well, Bill Bew reported that Hughes flew an Electra to San Diego, and one of the men at Lockheed told me that

he had flown the Electra a number of times. Whether these were tests as such, I don't recall at the moment if I knew.

Q Do you have any information with respect to whether or not Mr. Hughes in fact used an Electra to make some thousands of takeoffs and landings?

A Thousands of takeoffs or landings?

Q Yes, or hundreds, or any number. Do you have any information along those lines is what I am inquiring into, Mr. Rummel.

A I am trying to remember what Jack Real might have said, if anything, along that line, and I at the moment certainly don't recall any mention of thousands of landings.

Q What do you recall then?

A Well, only that he flew the Electras or an Electra — I don't know if it was more than one airplane — on a number of occasions.

Q Can you give me the substance of the result of the study that you made with respect to this project?

[13201] A I don't recall the results, Mr. Davis.

Q Did you conclude that a particular number of Electras would be desirable from your point of view as a possible addition to the TWA fleet?

A No, I don't recall what conclusion we came to, if any, on that. There were a series, as I mentioned earlier, of five-year studies. I think we had a preference for going the all-jet route, but I don't recall the results of this particular study.

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[13267]

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Q Going back to this question of reducing the procurement of 880s from 30 to 20, can you tell me when discussions or thoughts began relating to the possibility of reducing the order from 30 to 20?

[13268] A I recall a highly informal conversation at the Waldorf Hotel with Leonard Schwartz. I believe Rus Rourke was there, and I believe Ray Cook was, but I am not absolutely sure of that. This was shortly after Leonard became associated with the Tool Company, and shortly after he was disassociated with Lockheed.

I don't remember the particularity, but I remember he started talking about the severe problems of arranging for the financing of such a tremendous fleet of jets. I believe he mentioned talking to First Boston, but I cannot be sure that was in this conversation. I think it was—and that in his view the order had to be cut back.

I recall having tried to impress on Leonard what in my view was the need for our getting the 18 Boeings, as well as the 30 Convairs.

I say this was purely an informal talk, not prearranged. We just happened to meet, I think, in the lobby or some such thing as that.

Q I am referring to more serious discussions within TWA, within the management group of TWA.

A I took Leonard's views seriously because I think he was speaking in a serious vein. I tried to convince him they should get all of the airplanes, although I could not at that time—I never have been able to comment too knowledgeably on [13269] the financing area.

As I recall it, the number of airplanes danced around some, as I said before, from time to time.

Q Which was after the Tool Company had committed itself for 30?

A Oh, yes, this was after Schwartz called me and advised it was going to be 20. I asked him what 20. He didn't know. I don't recall any specific management discussions.

Q Perhaps your mind will work more effectively if I talked in this manner. Can you describe the circumstances

or studies that were made at TWA which led to the placement of an order for 30?

A I think that is in the testimony, Mr. Davis. I could repeat it.

Q No, I don't believe that you have testified as to what were the factors considered, and who participated in the decision to place an order for 30—880s.

A I thought I had, but maybe not. When we were into the negotiation on the 880s during, I think 1956, I think, I contacted Mr. Fellows who did not work for me then, but represented a traffic viewpoint in the company, and asked for his recommendation on how many such airplanes he thought TWA could use. I gave him the general timing of availability. He said he would look at it and contact me. He called me [13270] back in a few days and indicated approximately 30.

Q Mr. Fellows recommended that to you?

A That is my recollection, yes. I do not recall at the moment whether that was reaffirmed by Mr. Cocke. I just simply draw a blank on that.

Later on as the Convair deal neared its final stages—I am quite sure I did testify to this—Mr. Hughes suddenly asked one day now that we were nearing the end, did I think we should proceed with the 880 or not, or words to this effect.

At this point a meeting was arranged in Kansas City.

Q Attended by whom?

A I am sure this is in the testimony, Mr. Davis.

Q You may have in mind having told this to someone else, but I don't believe you have testified to that here.

A It was attended by a number of people from New York. I believe Clyde Fullerton was there.

Q Who was he?

A He was either at that time vice-president or the senior traffic manager or director. Jack Weller was there, as I recall it.

Q Who was he?

A Jack Weller?

Q Yes.

[13271] A He was a vice-president.

Q TWA people?

A Yes, TWA management people. John Collings.

Q I am up to the point where there was a meeting in Kansas City.

A I was trying to think of others that may have been there. I think there were others. I don't recall who they were at the moment, but it was the top people who were available who could come to such a meeting at the time.

The 880 was described.

Q By whom—by you?

A Yes. I discussed the rebate proviso, and asked the group the question finally, after describing the nature of the airplane and the proposed deal, whether they thought Hughes should proceed on this basis for TWA or not.

As I recall it, the group came up with a number of stipulations that it felt should be met, and these have been and were recorded in a memorandum at the time.

Q A memo by whom?

A I am not sure. It might have been one by me that I wanted to write down to have a record. I don't know. I am not certain any more, it was so long ago. But I remember one was written.

The conditions had to do with, as I recall it, an [13272] expression of whether or not we should include certification insurance or not, but frankly I would be confusing that with memories on a Boeing issue on that point, so I am not certain.

I believe an issue was taken on airplane price, and I think one of the contingencies was the sale of a certain number of these airplanes to Pan American.

Mr. Hughes' office, I believe, called me that night trying

to locate Mr. Collings, presumably to obtain the results of the meeting from him. Mr. Collings wasn't available. At least I could not find him, and Hughes finally talked to me, and I gave him the conditions or the recommendations of the group.

Q What were those?

A As I recall, those that I just got through outlining. I think this is all in the testimony. I discussed these, and then out of this came some further action of Convair to try to meet the stipulations to the best extent. The Pan American part of it was never met. I think the Pan Am statement, as I recall it, is a reflection of the gamble, the extent of the gamble that Collings or others might want to undertake with respect to the airplane price, and it reflected their concern over rebate.

One additional item I recall specifically was that we include in the contract as far as rebate proviso is con- [13273] cerned, that it be any Convair airplane or design that came directly from the 880, so as to broaden the base and remove any arguments on that point. This may have reflected the thought of my own or it may have come from someone else. I am not certain at the moment.

The overall view expressed by the group was that if the contingencies or stipulations or conditions could be met, they would then recommend Hughes proceed to place a commitment for the 30 airplanes.

Q Was the number 30 something which was arrived at by this group at this meeting at Kansas City?

A No, 30 at that time was the number that Hughes had been discussing with Convair. I might say that 30 was the number that I recall Fellows recommending, but it was much more than that. Convair took the position that they would not move into a program without an order for 40 airplanes. Mr. Hughes undertook a deal with Delta Airlines, and interested Delta, as I understand it, and Delta

agreed that they would take 10, and the difference was 30. What may have been in Hughes' mind—I am not suggesting it was not reflected in any true reason—what may have led him to 30 when he placed the order, I don't know, but it could come out in several ways as 30.

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[Testimony — September 21, 1962]

[13520]

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Q Perhaps I have gotten you to concentrate too much on these particular documents which I have marked.

I put them before you to assist you, if they did, [13521] in answering my basic question, which is to have you describe what took place in connection with the orders for jet aircraft which were placed and the decision to select Boeings, Convairs, and the number of aircraft that were to be ordered, and what happened not only internally at TWA, but also the extent to which Mr. Hughes or the Hughes Tool Company participated in those decisions or discussions or evaluations.

Mr. Williams: In 1956?

Mr. Davis: In connection with the orders which were placed for the acquisition of a jet fleet for TWA. It may have started before 1956.

Mr. Williams: All right. It may have started before and continued down to date. The whole story, that is what you call for.

Mr. Davis: The orders that were placed at that time. I don't want to repeat the Boeings that were acquired in 1961, Mr. Williams, and I think the witness understands what I am talking about.

Mr. Williams: I understand now.

Mr. Barr: Could I have his question read, please, before the colloquy?

The Special Master: Yes.

(The question was read.)

[13522] Mr. Barr: I have a lot of problems with the question, but the main problem that I have is the assumption built into it, which I take it is one of the issues in the case, where he asks the witness to describe a jet fleet purchased or ordered for TWA.

I have had problems before with the "we's," and so on, that the witness has used.

I think we ought to avoid that kind of a conclusion.

Mr. Davis: Excuse me, Mr. Barr, but that is why I asked the witness to describe the extent to which the Tool Company participated in those decisions, discussions or evaluations.

There is no question TWA acquired a jet fleet.

What I am trying to get him to describe is, from TWA's point of view, how this was done, and to describe in that connection the part played either by Mr. Hughes or the Hughes Tool Company.

Do you think that the witness is not likely to give us the facts?

Mr. Barr: I am sure he will give us the facts as best he can, Mr. Davis.

I think with that—

The Special Master: Taking into account this [13523] last statement, so that you can separate the jet aircraft that TWA did acquire from whatever participation Mr. Hughes or the Hughes Tool Company had in that acquisition, could you give that answer?

The Witness: Yes.

I probably should say that a great deal of what I did personally seemed to me to be done simultaneously, if you like, for both Hughes and the Hughes Tool Company and TWA, and for, I hope, the ultimate benefit of TWA.

The Special Master: When you relate that, if you can, separate or point out when you were doing something for both, and then, if you considered that there was any conflict between the interests of either one of them when you were doing it for both, say so, and what it is.

I think that may answer the question.

Mr. Williams: Could he take up the different programs specifically?

The Special Master: I think that would help, if you could start with the earlier programs, and work down.

The Witness: I think that would be easier, as far as that goes.

[13524] However, they become intertwined and interrelated from time to time just by the nature of the considerations that were there.

Mr. Davis: If you give us the facts of what happened, we will try to untwine anything that is intertwined.

The Witness: Would you like me to start with the Convair, the Boeing?

Mr. Davis: Start the way that it occurred.

Mr. Williams: The acquisition of the first jets.

Mr. Davis: The development at TWA of a desire for a jet fleet and what happened. Let's get the facts.

Mr. Williams: I am not disagreeing with you, but let's get the first jets.

Mr. Davis: Mr. Williams, please, I am asking the question, and I am not talking about the first acquisition of a jet. I am trying to develop a plan first, and the decision that was made by TWA, correlating the decision of TWA with the orders that were placed and who placed the order. I think the witness understands perfectly well.

Mr. Williams: It is a pretty big order, but [13525] let's start somewhere.

The Witness? I may have suddenly become a bit confused.

I understand, if I understand it correctly, Mr. Davis, you are inquiring into things related to orders that were actually placed by Hughes, leading up to that, rather than general considerations of jets, which I, for example, mentioned the other day. We considered a jet clear back in 1946, or 1945—

Mr. Davis: I am not asking you to repeat anything you have already testified to.

You can refer to it if you wish to.

I am now trying to develop the facts and circumstances which led up to the Hughes Tool Company placing orders for Boeings and Convairs.

The Special Master: So, if you will, take the first event, and deal, in the first instance, with the decision, and then the proceedings after that that resulted in an order.

[13526] The Witness: Well, I think it was during 1954, the first meeting could have been in late 1963 [1953], I am not certain now—

Mr. Williams: '53.

The Witness: (Continuing)—1953, but in any event, through 1954 a series of highly secretive meetings were held from time to time with Convair people in order to determine what kind of an airplane could be developed or let's say if one could be developed that would be economical if used on TWA's routes and what it could be.

Now, this consisted of meetings sometimes participated in by Mr. Hughes and sometimes with me. As I recall it, Mr. Rourke attended one such meeting in the Beverly Hills Hotel, but I could be confused on that point.

I mentioned these earlier in the testimony. I mention them now to try to put them in perspective. That was the beginning, in a way, of talking to Convair about jets, at least in the period that would more or less directly lead up to the 880.

It was by no means the first time we talked to Convair about jets. I also mentioned earlier, to try to put this in perspective now, I will mention [13527] it again, that we had looked at the commercial version of the YV-60 at Mr. Hughes' direct request. I say "we." I should have said I did, and then reported to Mr. Hughes my findings on it.

Q At that time what was the status of your dealings, if any, with Boeing? I am referring now to the time of these secret meeings with the Convair people in 1954 or late 1953.

Mr. Williams: Excuse me. I object. I don't think that we should have questions interrupting his answer.

Mr. Davis: It is for clarification, that is all.

Mr. Williams: All right, if it is limited to that, Mr. Davis, I don't mind. But I would prefer to have a consecutive statement in his answer of what you called for.

The Special Master: Let's have a consecutive answer to the question, unless there is some problem of clarification.

Mr. Williams: Yes.

A (Continuing) Also I might say before this time we had considered whether or not the flying needle would offer any reasonable possibilities for use in mail or express [13528] service, and whether or not a commercial variant of it would be practical. This was an exercise with Mr. Franklin, as I recall it.

I recall additionally, still to try to get all this in perspective, we had looked at turboprop versions of the twin-engine Convair, but I think that—I am not certain, but I believe most of these proposals came later.

In any event, they would not have been in direct competition with the big jets. But they were a jet type. That is why I mention it.

I don't know how many different airplanes and designs we looked at during this period. There were numbers of sizes and types. I tried to influence the development of these designs to the maximum extent I could to make them as practical as possible.

In this particular period of time there was grave doubt that the state of the art had advanced sufficiently to develop a practical and economical jet transport. In a way, this was an effort to try to push the state some, and to explore with Convair what might be done.

I recall that I was trying to determine whether or not one airplane type could be built to satisfactorily serve both international and domestic operations. If this [13529] was feasible technically and economically, I felt there would be economy in this course of action, and I felt it would be better for the manufacturer because his market would be broadened and he would probably be more apt to proceed.

During the latter part of this period of time I became aware of, I believe initially through Convair, of the development of advanced engines which were rather quickly recognized as a potential difference between success and failure economically of jets.

When this occurred it became clear that rather than talk about turboprops and jets we had a chance of developing pure jets that would be suitable for international service, whereas up to this time there was doubts as to the range of the jets with jet engines now rather than turboprops.

Convair then proceeded to lay out various designs with myself participating.

On occasion, I would discuss design ramifications or possibilities with some of my associates in TWA, but generally it was a very closely held development. Sometimes it was discussed without specific reference to Convair or what it was doing. Sometimes I requested studies which I thought would produce information and might be of [13530] assistance. I don't recall these specific exhibits before me here as being such studies, but things like this could well have been done at that particular period of time to shed light on some areas.

Mr. Hughes had a very keen interest in the design characteristics, features of the airplane, the estimates of availability, and, as I said, participated personally in a number of these meetings.

The meetings I am referring to were held intermittently and irregularly. It was when Convair had something to present, then a meeting would be held. They were held in all parts of the country, and this certainly is not exact, but I suppose not oftener than once every four months. But it wasn't on any specific schedule. But that was the order of the activity with respect to the review activity.

I received a call or calls from Hughes, and here I have to deviate some from the Convair situation in order to cover the Convair situation, during 1954, I don't remember the exact time of the year, but I think during the summer, possibly toward the fall, with respect to the 1449-A, which was a turbo-propeller airplane that he had been discussing with Lockheed.

We got into a negotiation with Lockheed on that [13531] airplane, and it was finally ordered by Hughes. As I remember, it was December 23, 1954. I am quite sure, at least, it was December 23rd.

Well, this particular project ran into difficulties. This was one I mentioned earlier that I had recommended against and the TWA preference at the time, as I had understood it, was for the DC-7C. The reason I was

opposed to it, and tried to prevail with Mr. Hughes, was that I felt that it was an uneconomical airplane.

Since I am really trying to get back to the Convair situation, let me summarize this, and if you want me to, I can try to fill this in later on.

In any event, Pratt & Whitney withdrew the turboprop engine, and Lockheed was prevailed upon to put in a Wright engine or decided to put in a Wright engine. It became the 1549-A, and then later became the 1649-A, and that airplane was delivered in quantity to TWA during the Burgess regime in 1957.

It was during the—that negotiation, that is, as I recall it, the resurrection, if you like, of the 1649-A out of the 1449-A debris, that work began in earnest at Convair on the development of the model 18. I recall this because I was on the West Coast at the time, and was asked to conduct the two negotiations simultaneously, to keep [13532] the Lockheed negotiation going, and to undertake negotiation with Convair for the model 18.

I might say, the model 18 was not the model 880. It was a larger predecessor generally similar to what Boeing finally built, but at that time believed to be somewhat better than either Boeing or Douglas' offering, and to explain that I perhaps should say that my recollection is that at that time Boeing and Douglas were both offering domestic jets, and had not taken the step to international jets, where we were seeking, Hughes and I, to get an airplane that could serve both areas. I think I viewed all these efforts as representing TWA's best interest, and I certainly wasn't aware of any conflicts of interest.

The model 18 development spanned quite a period of time, during which specifications and contracts were developed. I reported to Hughes from time to time, I was cautioned not to discuss this with TWA management on numbers of occasions.

Mr. Hughes, however, knew and understood that I was bringing in TWA experts from time to time to aid and assist in specific areas.

Now, I am not saying that each and every person was cleared. I think he had that confidence in me. [13533] He simply knew that I was doing this because I would ask if this would be quite all right, and he said on a limited basis, certainly, but keep the group small, as I recall it.

Hughes had numbers of discussions with Convair or let me say, Convair reported he had had such discussions, and while I can't be specific, I am quite sure that Mr. Hughes mentioned it a time or two.

The model 18 was tailored as much as I could make it to satisfy TWA's route needs and its requirements. We tried to make an economical airplane, and one that was advanced over what we understood Boeing and Douglas were offering, but in this period we were not doing any work with Douglas. This is one of the periods I mentioned earlier, where we weren't working with them.

The numbers of airplanes I am a little vague on. I remember some of the early drafts had as many as 30, but I don't recall the numbers ever having been really set with Convair. We were talking about getting the program under way, and I don't remember coming to any final numbers on the model 18, but this could have happened.

I think it was in—a little after mid 1955 that Convair came to the conclusion that there wasn't sufficient [13534] difference between the model 18 and the airplane that Boeing and Douglas then proposed to justify the risk. During the period that preceded this, as I recall it, both Douglas and Boeing had announced international versions, and had also changed their fuselage around, as I remember, both enlarged the fuselage, and when they got through with these things, their improved airplanes, while different, were not spectacularly different from the one I had been

working and Mr. Hughes had been working with Convair on.

Now, as far as I knew, during this particular period, while there were some review meetings prior to the detail negotiation with Convair concerning the configuration of design, I don't recall meeting with Hughes participating during that period we were working directly on the project. I think he was relying primarily on me to have the airplane configured to reflect TWA's requirements.

There were a number, however, of technical discussions between myself and Hughes on a good many features. Hughes was most keenly interested in almost myriads of technical aspects, and to the extent that I could, why, these would be discussed.

I was advised later that there were meetings during this period between Convair and Hughes that I [13535] didn't participate in, but the only thing I recall along that line is Ralph Bayless having mentioned this a time or two, but I don't recall the particularity, and I don't recall even having tried to find much out about it. I think I viewed this as certainly a prerogative that Mr. Hughes would have.

Well, when Convair came to the conclusion that the model 18 wasn't really what they wanted to build there was a considerable flurry of calls, replanning, reconsideration, that involved myself, Hughes, Convair, and so on, and the net result—I guess "and so on" isn't a very good term here. I had Russ Rourke in on part of this, Marcy Fannon, who worked for me, and some other people, to give further consideration to and to assist me in determining whether or not further recommendations should be made to Mr. Hughes.

Hughes had suggested a six-engine possibility. I remember one of the exercises we went through was to try to find out whether six engines made good, balanced sense from the airline's point of view with respect to things like

probability of failure on six versus four, engines—there are a whole number of considerations one could list, pros and cons. But in any event, we did move forward with Convair in laying out some six-engine airplanes.

[13536] We also looked at additional four-engine airplanes which were arranged a little differently than the model 18. One of the bigger airplanes was an attractive appearing double-deck airplane, and laying it out, for example, we had gone through some structural analysis, an effort to determine whether it was more efficient to build a double-deck airplane or a large single diameter airplane, and we came to the conclusion, which Convair concurred in, that the double-deck was better.

Some of these ships I laid out to illustrate what I had in mind, and in order to interest Convair in exploring these possibilities further, because their frame of mind at the time was, as I recall it, was generally that they did not want to build large jets, but seemed to be bending toward building smaller jets.

Mr. Hughes showed fairly keen interest over the phone, as I recall it, in the double-deck airplane. I at the moment do not recall Mr. Hughes seeing the actual layout, but there could have been a meeting along this line.

This got to the point where Convair did become interested, and the project, as far as I was able to determine, had the support of the San Diego management, at least it had that support to the extent that it presented the plan for building this airplane to the General [13537] Dynamics board, or at least it was so reported to me.

The board, as I indicated earlier, turned it down. The only explanation that I recall is that it was simply too much to undertake, and also that to undertake a big jet at that time, with Boeing and Douglas moving forward, and having already captured orders, did not make too much sense, because while all this was going on at San Diego, the

delivery positions toward the end of this operation were in fact being snapped up by our competition at Boeing and Douglas.

Now, it was during part of this that we—I say "we"; it was a discussion with Hughes now that I am referring to—gave consideration to the need for TWA having jet aircraft, at least contemporaneously with our competition, and preferably before. We had not been unmindful of the time it would take to develop airplanes, but the emphasis was on developing these newer airplanes, and it became very clear that serious consideration should be given to procuring Boeings or Douglases.

Now, Boeing had a distinct advantage, in my view, in two areas. One was the background of experience in building big jets, and the other was that they had a significant lead over Douglas in initial production.

Negotiations were undertaken with respect to [13538] holding delivery positions, and some change, as I recall it now, in specifications and preliminary contracts with Boeing in this period, and this finally led up to procurement of the eight, I think it rather quickly became nine 131s.

Hughes and I had discussed this in light of a hedge. This would get us in the business, permit us to—that is, "us," TWA—to at least have a toehold until this bigger, better airplane could be produced, if ever. I remember we also discussed ultimate use of the 131s along the line, well, maybe it could become a sky coach airplane.

[13539] Now, during this period I was trying to influence Hughes to go the Boeing route, particularly the latter part of the period, because while I was highly interested in TWA having the best airplanes that could be built, it became very obvious that we would have to move.

Otherwise a significant gap in time would exist between when our competitors had airplanes and we would. It was also during this period of time, not as a constant thing, but

it was interwoven, during this period of time that attention was given to a development by AVRO. This was a large, as I remember it now, six engine airplane designed for low supersonic speed cruising.

By that I mean it was a fairly slow supersonic airplane that would cruise, I think, between 900 and 1200. I don't recall the exact figure. Miles an hour that is.

It was during this period of the model 18, model 19, and model 20 at Convair, after the General Dynamics board pulled the plug, so to speak, activity at Convair, on my part, at least, pretty much ceased.

We went to work more in earnest with Boeing, reviewing specifications, and I will get to the Boeing story, there were numbers of discussions and a few meetings in Beverly Hills, a couple in San Diego and so on, I received a call from Mr. Hughes advising of the development of the 880 [13540] proposal by Convair. He asked that I review it. He described it briefly. He advised that Convair would be getting in touch with me.

The thing that sticks in my mind here that recalls this is that I had another commitment which prevented my seeing the Convair people right at that time, but it turned out that I saw them anyway, but under conditions somewhat different than had been planned. They chased me from Kansas City to Seattle, and we met at Seattle, and I believe this is the first time that the 880 was reviewed by myself or Rourke.

It was considerably smaller than the airplanes we had been working on. This was in the winter, I think, between 1955 and 1956, but I don't recall what month. I think fairly late in 1955.

We, as I recall it, were not particularly favorably impressed with the 880, and tended to favor, from TWA's point of view, placing a larger Boeing order. However, we continued to work with Convair.

Now, during this ensuing period, which I am not certain of, the time precisely, but I think in early 1956, or maybe late 1955, Mr. West was requested to do some preliminary contract work at Convair with respect to the 880, and it's my impression that he worked quite closely with Mr. [13541] Hughes during this period of time. He was out there quite a while. I also had a few discussions with Mr. Hughes on the 880, and Mr. West would occasionally discuss some phases of the contract.

I remember discussions as to the nature of the specifications which should be attached. At this point Mr. Hughes did not want my or TWA's active participation as he had had it before on the model 18 in the model 880.

In the meantime, we were proceeding with Boeing negotiations. I recall one meeting in San Francisco where Mr. West came up from San Diego to meet with me. I was attending a NASA—I think it was then NACA—committee meeting.

I reviewed the papers with Mr. West, and saw the need for contacting Mr. Hughes with respect to the specifications, and the way Convair apparently wanted to handle that part of the deal, and I placed a call and got him immediately in that case, discussed my views and the strategy I had in mind.

I had already discussed it with Mr. West, and he had agreed this would be a good thing if Mr. Hughes would agree, and he did agree, and as I recall it, that basic strategy was followed pretty much throughout the 880 deal on our part.

[13542] Q Do you mind identifying this basic strategy?

A It had to do with the method of handling the paper work, how we handled specs, when we got to charges, how they would be handled in relation to it, and I can tell you it was a worthwhile thing.

This work was preliminary to the Hughes Tool Company signing the letter of intent. Now, part of this—well,

I am not sure whether this was done simultaneously or not, or whether it was done before the letter was signed.

It may have been part of it, or it might not. But in any event, at this time there was—I say "at this time"—about this time, and maybe at the time, I am just not that clear any more, there was an agreement entered into—I think I referred to this earlier—by the Hughes Tool Company to pay Convair's costs of investigating the 880 design or in furthering this undertaking up to a specific amount.

The number that comes to mind is a hundred thousand dollars, but I am not sure that that is what it was. In other words, if the deal aborted, then Hughes would pay actual costs not to exceed whatever this amount was, as I recall it.

We then—I am not sure I am recalling each and every step—but we then undertook at Mr. Hughes request a full [13543] scale specification and contract negotiation in which numbers of TWA people participated.

I coordinated and was in charge of this activity for Mr. Hughes.

The Special Master: I think we might take a short recess at this point. I have a telephone call I have to make.

(Whereupon, a short recess was taken.)

The Special Master: I want to put on the record that during the recess I talked to Judge Metzner, and he asked me to, on his behalf, direct all counsel to not merely call the chambers of Judge Metzner at a quarter to 6:00, but either go to his chambers or send a representative to get whatever decision he has made.

You may proceed.

Q Do you want to resume now, Mr. Rummel, and keep the threads of the two negotiations with Convair and Boe-

ing going to the point where orders were placed?

A Yes, sir.

The Witness: Could the last phrase be read to me?

(The record was read)

A (Continuing)—Now, this was during the spring, I believe, of 1956, and culminated in specifications and the [13544] Hughes Tool-Convair contract form. By specifications I am referring to the development of specifications which finally resulted in a procurement specification.

For example, many items were priced out which we would then ultimately choose, and before the final papers were signed most of these choices had been made, but they were not made during the course of the bulk of the detail specification activity, including the large TWA contingency.

People from TWA that participated in the specification discussions were representatives from flight operations, the traffic department, maintenance and overhaul, passenger service, and this was done to insure that the specifications represented TWA's requirements, which, as I indicated earlier, I understood my charge from Hughes to be with respect to the nature of the 880.

Q Can you identify the number of aircraft that was involved in these contract negotiations, and how that number was arrived at, and who conducted the contract negotiations with Convair—

A The contract negotiations once the letter of intent was signed were handled by myself and Mr. West.

Q Mr. West of the Chadbourne firm?

A Yes, sir, Harry L. West.

Q Because there is also a West in the Houston firm. [13545] A I know.

(Continuing) Additionally, on occasion Mr. Hughes would have conversations with Convair.

Sometimes Jack Zevely, sometimes Jack Naish, although I can't really presume to know who else he might have talked to. That is all I recall hearing about.

Q The number of aircraft involved.

A Yes, sir.

(Continuing) Convair had taken the position that it had to have a minimum order of 40 to proceed. I did not conduct negotiations in any way with Delta with respect to numbers of aircraft.

Convair reported that Mr. Hughes had done this, although I don't think that I took that to mean that Convair had not.

Mr. Hughes did advise me of Delta's interest in ten. We discussed some competitive aspects, and agreed that we would cooperate fully with Delta with respect to developing as nearly as we could between us an airplane which satisfied TWA but still met Delta's requirements.

In other words, we were going to undertake as an objective an effort to attain a standard configuration between Delta and TWA.

Numbers of the specification conferences were [13546] held more or less simultaneously with Delta and TWA exchanging notes and sometimes participating in each other's meetings.

Convair had assigned a project engineer to handle the TWA or, rather—excuse me—Hughes Tool specification negotiations, and had assigned an assistant project engineer to handle Delta's.

We exchanged through Convair all change requests tendered by either airline, one with the other, and Convair, as a practice, offered the change that was being considered to both airlines, spreading the non-recurring charge in three ways, 10, 30 and 40 units, and in some few instances Convair was prevailed upon to spread non-recurring charges over more than 40 units, as I recall it, on the

speculative basis that this would be a standard that would be offered to others.

Toward the end, I think, of August we found quite a few loose ends that required handling. At this time I drafted and counsel redrafted some 20 or 22 side letters in an effort to wind things up contractually.

As I recall it, the final San Diego meetings resulted, to some extent, in my still being dissatisfied to some extent with the outcome of the negotiation, and—but notwithstanding, Convair signed the contract.

[13547] I believe Jack Naish was then the executive vice-president who signed. I am not sure whether he was executive vice president or president, but I think it was executive VP.

During this period I was in close touch with Mr. Hughes, and by that I mean that significant items or items that appeared to be significant were reported when the opportunity was afforded or instructions received.

However, as I recall it, the signing by Hughes Tool did not occur then, but just a little later. I am not entirely clear as to the precise sequence of events here.

Before Hughes Tool made the decision to sign I had had the meeting, as I described it earlier, with Mr. Collings and others to review whether or not, now that we were more or less at the end of the negotiating road, these were airplanes that TWA really wanted in light of current knowledge of the current situation, knowledge of what others were doing with jets they had ordered, and so on and so on.

Q You are referring to the Kansas City meeting you previously adverted to?

A Yes, sir. This was a meeting attended by Mr. Collings and a number of others. Some came out from New [13548] York for this meeting.

During the meeting I merely described the nature of the contract, the airplanes. I am quite certain that Mr.

Rourke also was in this meeting. I do not recall having taken a position strongly in favor of or against, because I thought this should be an individual view, I had been so awfully close to Mr. Hughes and Hughes Tool during this process.

I might say too that during some of the San Diego negotiations Ray Cook was there, he was in and out.

When I say I was in charge of the contract negotiation, I understood I was, but on occasion others participated, aided and helped, or Mr. Hughes would call directly, and we would be advised of that through Convair. If anybody was, I was.

However, back to the Kansas City meeting, I think I testified earlier the results of the meeting as I recalled them. I don't recall anything else at the moment.

Mr. Hughes was apprised of this by me, as I recall it, when he failed to make contact with Mr. Collings.

It would not have been unusual for Mr. Hughes to talk to Mr. Collings, although at the same time I don't have the impression it was a particularly common [13549] occurrence.

There was a series of phone calls that followed with Convair, that is, between Jack Zevely of Convair and myself, and Hughes and myself, in an effort to wrap up the contract in a way that would be in agreement, as nearly as could reasonably be done, with the stipulations that came from the TWA meeting.

One of these was the inclusion of the phrase "derivative designs," which was a better phrase than Convair then had in, as it applied to the rebate proviso.

If I could interject this, Mr. Davis, when I was describing rebates this morning I mentioned a rebate that went between 40 and 100 airplanes. The rebate proviso had several stipulations, and there were rebates that—commitments that covered up to a thousand airplanes.

But some of these were contingent on Convair making a profit, and some were not.

I only say that now because I wouldn't want the record to imply that I had covered the rebate completely. It was a fairly complicated eight or nine-page side letter agreement, as I recall it now. Possibly not quite that many pages, but at least enough to not be covered in one sentence or two.

Zevely was in New York, I think with Mrs. Zevely. [13550] They were about to go to Europe. He had been held over upon request of the Hughes office in order to try to wrap up this negotiation.

During these final phases, as I recall it, we succeeded in almost all efforts. Any that we didn't succeed in I don't recall at the moment. When I say "we," I was working with Jack. We reduced the price, we got the language, we did not succeed in—now that I think about it—in free certification insurance.

As I recall it, we paid for it. The term "insurance" is a misnomer. This is what we call this particular contractual proviso.

I reported all this to Mr. Hughes, and after he was satisfied—and I might say there was an exchange of wires back and forth that memorialized these agreements in addition to the things that Naish signed—Hughes called me or at least said in a conversation to advise Raymond Cook to request the Hughes Tool board to go ahead and sign the contract, and I believe I said something to the effect, "gee, I thought Raymond would appreciate it if he could talk directly to Mr. Hughes on an item of that type, and he said no, he explained how busy he was, and asked Raymond to go ahead."

I called Raymond, and my recollection is that [13551] Raymond said he could do no such thing, that he would have to hear that from Hughes, and I said, "Well, Ray, I under-

stand perfectly. I don't blame you a bit. I would say the same thing."

That's where it was left, except that a day or so later I was advised that it had been signed—I say "a day or so." It was rather quickly. I am not sure exactly when—that the Hughes Tool Company had signed it, and I assume that this was cleared directly with Mr. Hughes.

The Special Master: I think this is a good place for a recess.

Mr. Williams: May the record show the witness has not finished his answer?

The Special Master: Yes, it may.

* * *

[13556] * * * The Special Master: I have a brief statement I want to make to counsel.

On the 15th, during our argument, there came to my attention for the first time in these proceedings, although it may have occurred earlier, and I didn't become adequately aware of it, separate and apart from the motion for summary judgment, that a serious question was being raised about the jurisdiction of the Court over the subject matter.

I consider that a matter that the Court has to meet at the threshold, as the saying is usually given by Courts, and I think it is beyond my jurisdiction as Special Master, although I haven't examined the subject.

However, I do feel that I have a duty about it, and should do what I can to develop evidence that will bear on the subject if there is such evidence in the case rather than letting the parties and counsel go on for an indefinite period and have the Court [13557] discover that it never did have jurisdiction over this case, if that should occur.

Therefore, regardless of what Judge Metzner should decide, if he should decide that we should proceed with the Hughes deposition on Monday, the 24th, I think we should all address ourselves to as promptly as possible developing the question of whether the Court does or does not have jurisdiction over this case.

If the Court should sustain my rulings in regard to the Hughes deposition, and we should convene on October 1st as our next meeting, then at that time I should like to direct counsel to be ready to produce whatever evidence they can as rapidly as possible on this question of the jurisdiction of the Court over the subject matter, and in connection with that, either by admission of the parties as to CAB proceedings, or if that cannot be obtained, by authenticated documents that are admissible under the federal rules, to obtain and have in these proceedings all that we can obtain that will bear upon this question, so that factually I can do what I can, what I think it is my duty to do as Special Master, to have the factual situation developed as much as possible on the [13558] question, and then either request you, or do it myself, if counsel do not do it, to bring it to the Court for its determination, and I think, in that regard, you may well have the question of whether it is open at all to have an antitrust proceeding for divestment or divestiture under Section 7 brought by a private party, you may also have the question of whether primary jurisdiction is with the CAB, and the Court does not have jurisdiction until the matter is properly presented there.

That will probably involve the question of whether whatever was presented to the CAB granted immunity from the antitrust laws, and whether there was a full disclosure, or whether there was a duty, if

there wasn't a full disclosure, to bring that to the attention of the CAB rather than the Court.

I will try to bring to your attention when we convene again, wherever it is, the law in regard to the duty of the Court and the Special Master concerning a matter of this kind, and anything else that I can contribute.

Are there any questions?

Mr. Davis: Thank you very much, sir.

(Whereupon, at 4:45 p.m., the deposition was adjourned.)

* * *

[Testimony — October 1, 1962]

[13581]

* * *

Q Will you resume now with the answer which you started to give to the last question I asked you at the close of the last session? Do you remember where you were, or would you like to look at the record?

A It might be helpful. As I recall it, we were talking about the Convair procurement program, and the [13582] part that Hughes Tool played in it, and also the decisional processes that we had gone through.

Q That's right. You were to describe both the Convair and the Boeing—

A I didn't understand I was talking about the Boeing.

Q You may look at the transcript. You started with one, but the question was to describe both.

A I wonder if it wouldn't be—excuse me.

Q You were, in your answer, describing what was taking place at Boeing while conversations were being had with Convair, and the problems created by Convair's decision not to go ahead with the model 18, 19 and 20.

Mr. Williams: What page is this?
Mr. Barr: Try 885 [13525].
Mr. Williams: 885 [13525]?
Mr. Barr: Yes. He did ask for both.

A That helps bring it back to mind. I believe I did find it necessary to talk about both to preserve the reasonable chronology of events.

I was concentrating, as I recall it, on the Convair, just bringing Boeing in as needed to clarify—

Q That's right, in context with the decision made. You were, in effect, describing, Mr. Rummel, what took place in connection with the placement of orders for jet [13583] aircraft for TWA or by TWA or by the Hughes Tool Company and the part that you played in it, TWA played in it, Mr. Hughes and the Hughes Tool Company, and what was taking place.

Look at page 903 [13543], line 17:

> "Q Do you want to resume now, Mr. Rummel, and keep the threads of the two negotiations with Convair and Boeing going to the point where orders were placed?"

That is what you were doing.

A Yes, sir, and I believe I had gotten to the point of completing the description of the signing of the Convair contract as the session closed.

Q Yes. You referred to the meeting in Kansas City and to the placement of the letter of intent by the Hughes Tool Company and eventually an order, and I would like you to keep the thread going between the Convair negotiations and the Boeing discussions, those with Douglas, if any took place, or with anyone else, during that period of time, so that we can get an understanding of what took

place in connection with this jet procurement program. I remind you once more at some point which you find convenient to inject the problem and the decisions which were made relating to provisioning.

Mr. Williams: It does appear on page 880.

[13584] Your basic question starts there.

A As I recall it, the Convair-Hughes Tool 880 contract that was signed during September, I think, 1956, the order for the nine, as I recall it, nine 131 airplanes, was signed during early 1956—I am not sure of the month; I think it was February—and the order for the eighteen 331s was placed, oh, within a month or two after that.

Again, I am not sure of the exact month. I only state this to put the chronology in perspective.

Q You did not describe to us how the number of 880s was arrived at at Convair, and if you remember, my basic question was also to describe how the numbers were arrived at, and you made a passing reference to the desire to get a delivery position in the Boeing schedule which resulted in the placing of some orders, but you have not yet described fully what in fact took place with respect to the placing of those Boeing orders.

A Yes. Well, now that I think about it, I am not certain whether the initial order for 131s was eight or nine. It may have been eight. I believe it was eight, and then there was a change order that changed it first to nine, and it finally moved on up in I think three successive changes to fifteen, or something like this.

The idea behind the 131 that seemed prevalent at [13585] the time was that the 131s were stop-gap in nature, that these airplanes would permit TWA—

Q Would do what?

A (Continuing)—permit TWA to have a relatively

early jet operation, and would provide us with some airplanes until the time that a bigger, superior airplane could be developed.

It was during this time and prior to this time that Mr. Hughes was working with AVRO, and that he had asked me to become involved on occasion with AVRO in analyzing their designs.

Specifically, I don't recall exactly how the eight was arrived at. My recollection is that the impression I had then was simply that this is a minimum number, and that Hughes wanted to put a minimum amount of money into a stop-gap type operation.

Now, the numbers of airplanes, as I said, was increased from eight on up to fifteen. This was done over a reasonable period of time in order to provide TWA with more airplanes because as time went on it became more and more apparent that if a new superior airplane were produced it wouldn't be produced quickly, and then finally it became apparent that such an airplane would not be produced.

[13586] Along with the increase in numbers of airplanes were changes in the airplane delivery schedule. These changes in the delivery schedule were worked on very hard by the Hughes negotiating team in an effort to provide us with the best possible competitive schedules.

I am talking now about delivery schedules of airplanes to us. During this period the airplane delivery schedule was improved quite markedly. In other words, by the time we had fifteen airplanes let's say the first eight of those fifteen were scheduled to be delivered significantly ahead of the time that the original eight were scheduled to be delivered. So a noticeable gain had been made in that respect as part of this extended negotiation.

There were discussions a time or two in TWA on numbers of airplanes. I do not recall the particularity. I re-

member Mr. Collings did have views on it. As I recall it, he tended to want at that time relatively few jets, but I don't recall the specific exchange that took place.

The negotiations for the 131s was conducted by Mr. Hughes, myself and Mr. West primarily—that is Harry L. West—and during the course of these negotiations it became appropriate to include numbers of TWA technical people to work on the specifications which I set up and which they [13587] then did on a coordinated team-type basis.

[13588] I don't recall any meetings of the type that I mentioned on the Convair 880 with TWA management, and I don't recall having participated in any activities involving clearance with TWA on that acquisition. I am not at the moment entirely clear as to just how the papers were shuffled in the end at the time—just prior to their being signed by the Hughes Tool Company.

I do recall that Mr. Hughes mentioned not once but several times during the early phases of the Convair negotiations and then after that that he did not want any action taken that would indicate that TWA had a right to these airplanes, that this was strictly a Hughes Tool deal. He did want the airplanes configured to meet TWA operational requirements, but he distinctly did not want any records made, any letters drawn, any files kept, in a way that would indicate that TWA had rights to either the Boeings or the Convairs. The reason he gave was that he wanted to wait and approach the CAB for clearance of the whole of the program rather than approach the CAB with a piece of it at a time, and that in the meantime he wanted no records made to do this.

Now, I might say that on receiving that instruction I attempted to set it up internally so this would happen, although some of the letters and things did refer to TWA [13589] requirements as such. I tried to keep it distinctly a Hughes deal, believing, I might say, that my authority

was from Hughes as a special rep to implement and handle these contracts and to reflect the TWA requirements.

A number of meetings were held that I was apprised of in very general terms at the time in which I did not participate relative to the 131 deal.

I think Ed Wells of Boeing participated in one along with some attorneys at Beverly Hills, and this may possibly account for the vagueness of my recollection.

I think that things were handled there—well, I just simply don't recall how. At least, I don't recall in detail as to what occurred.

In any event, the contract for the 131s was signed by Hughes Tool.

The 331 negotiation to some extent was concurrent with the 131. That is, the actual negotiation to some extent took place at the same time.

I am afraid I am vague on how the number eighteen was arrived at. I don't recall if this represented a financial limit on his part or what. I do not have a recollection that it was a TWA number.

Undoubtedly, though, but I have no specific recollection —well, I am sorry. I am not supposed to speculate, [13590] so I shan't do it.

Q I think if you have some information with respect to this which you are not personally familiar with but you believe is fairly accurate you can indicate the nature of what it is you want to tell me. I am interested in also discovering anything you might say that might lead me to someone who might know more specifically.

Mr. Williams: I would like to say we are interested in information, and I have no objection to that. I have warned the witness against speculating, but that has nothing to do with recollection.

If you have any recollection, you should state your recollection. But that is quite different from speculating, guessing.

A I was only going to say that I certainly knew it was going to be eighteen airplanes before the contract was signed, and what I don't recall is whether there was any concurrence from or clearances in TWA, and I would be speculating if I said that if there were I would remember them.

Either I remember or I don't.

In this case, I don't remember that.

Q Let me refer you to what has been marked as Defendants' Exhibit 157, Mr. Rummel, which was a memorandum to [13591] you from Mr. Rourke dated August 17, 1956, which does have some estimates as to domestic fleet requirements and international fleet requirements, and perhaps that may refresh your recollection as to what in fact was taking place and how some of these numbers were arrived at.

If you look at Exhibit B to Defendants' Exhibit 157, you will see the statement appearing there that the number of Boeing 331 required would be 14.

A I may be mistaken, Mr. Davis, but I believe this memo was written some time after the—after Hughes ordered eighteen Boeings.

Q It may be.

A I was discussing what I thought was responsive to your question, as to whether or not I recalled anything relating to fixing the number eighteen prior to the time that the order was placed.

Q Let me refer you to this Boeing report which was entitled "Economic Study of Boeing/Convair and All Boeing Jet Fleets."

Does that mean that in connection with the placement of a Boeing order Boeing was taking an active part in estimating what the needs of TWA should be?

A Well, as I indicated before, I must say I don't recall the Boeing report, I don't doubt that it existed, [13592] but I indicated before that I seemed to have a vague re-

collection that Boeing was trying to sell more Boeings and sell us on taking that course rather than going ahead with the Convair 880.

I haven't seen the Boeing report here, and I don't specifically recall it, but I suspect that is what it was all about.

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[13666]

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Q Am I correct in understanding your testimony that whatever Mr. Thomas was referring to in his notes, which have been marked as Defendants' Exhibit 155, relating to this sentence, which reads, "This reduction followed TWA's management recommendation and was perfectly acceptable," so far as you are concerned, you had no part in such a management recommendation, if one took place?

A Well, I certainly don't recall participating in any such thing. I am not clear on when this was or how—what the relationship of this is to the Schwartz call in terms of timing. I don't remember exactly when the Schwartz call was. We did change over our jet plans and premises base from thirty to twenty airplanes, but that was a [13667] considerable period after the Schwartz call.

Q I believe that the other day we identified that these notes of Mr. Thomas were dated approximately March 1960.

Mr. Zeller: Of course, that is not material—you understand that—particularly.

[13668] Mr. Davis: He asked me a question as to when these notes were—

Mr. Zeller: Yes, but the real question is as of what date does this particular sentence speak, right?

Mr. Davis: At this point I am merely interested in what this witness knows with respect to what Mr. Thomas referred to as a TWA's management recommendation for a reduction in aircraft.

Mr. Zeller: Mr. Davis, the witness made it perfectly clear to you that he was having difficulty plac-

ing this Schwartz telephone call in time in relation to the period as of which Mr. Thomas was speaking in the single sentence.

Mr. Davis: And all I can give him is the date of the Thomas notes. I am sorry I cannot help the witness any more than that, Mr. Zeller.

A Well, as I said earlier, Mr. Davis, there were post mortems, I think there were some discussions or commentary on the numbers of airplanes running up pretty much to December 31st, but I do not recall being a party to a decision or a recommendation that said that TWA wanted 20 rather than 30 airplanes, if that is what you are saying, and that is what I understand that Thomas is saying.

[13669] Q I understand now that so far as you recall you did not participate in any such corporate management decision.

Now my question to you is when did you first hear of the decision of reducing the 880 program for TWA from 30 to 20?

Mr. Barr: May I ask, Mr. Davis, you specify by whom, decision by whom?

Mr. Davis: I am still referring to Mr. Thomas' notes, which says that TWA's management had made a decision, and I am—

Mr. Zeller: This is the difficulty we are getting into, Mr. Special Master, because there isn't anything in here about a decision by TWA's management. The word is "recommendation" by TWA's management.

Mr. Davis: All right, the recommendation then. I will change my question to the recommendation.

Q When did you first hear, if you ever heard, or did you ever hear, that anyone at TWA recommended to Mr.

Thomas reducing the 880 program for TWA from 30 to 20?

A Well, I don't remember that. I remember Mr. Leslie seeming to be happy that it was 20 instead of 30. I don't recall hearing of a specific recommendation along that line. I know we made numbers of studies on various [13670] numbers of airplanes showing what they would produce.

Q Mr. Leslie was on this management operating committee?

A Yes. Yes, as I recall that, it consisted of Pierson, Leslie and Mr. Cocke, I believe.

Q Did you ever hear Mr. Cocke express the point of view that he was happy that TWA would acquire only twenty rather than thirty 880s?

A No, just the opposite. I remember Mr. Cocke indicating numbers of times that he would like to have all 30 airplanes.

Q Do you recall hearing about Mr. Pierson's view on that subject?

A I don't remember Mr. Pierson expressing a view on that subject.

Q Prior to the time that I showed you these notes of Mr. Thomas, Defendants' Exhibit 155, had you ever heard or understood Mr. Thomas' views as to the desirability of committing TWA to thirty rather than twenty 880s?

Mr. Zeller: You mean 20 rather than 30?

Mr. Davis: No, I think the way I said it is the way I meant it.

A I don't recall—

Mr. Davis: Twenty, I think you are right.

[13671] Q It would be 20

A I don't recall Mr. Thomas urging that we take down 30 instead of 20.

The Special Master: You don't answer the question the way Flander put it.

A Did I get confused here?

Q Yes. Twenty rather than thirty.

Mr. Zeller: I did my best.

A Mr. Thomas expressed on several occasions his belief that TWA would be better off to take the minimum number of what were then currently offered or currently offered or currently built, we will say, built jets, on the basis that we will be able to probably get succeeding superior models later and be in a better position to do it then. I must say that I had the impression that Mr. Thomas was quite content with 20, and preferred it to 30. This is the impression he gave me.

Q Do you recall approximately when it was and the circumstances under which you got that impression from Mr. Thomas?

Mr. Barr: Before that question is answered, could I have the last part of the last answer?

The Special Master: What do you mean by the last part?

[13672] Mr. Barr: The last two sentences.

The Special Master: All right.

(The answer was read.)

The Special Master: There is a pending question. Will you read that?

(The question was read.)

A Not precisely, no, but I believe during the early part of 1960.

Q Do you recall what took place on that occasion, what he said, what you said, who was present, the circumstances under which these views were expressed?

A Well, on one occasion, but I can't be specific as to date, we were chatting, as I recall it, in his office, Henry Fellows, myself, Mr. Leslie and Mr. Thomas, and by this time, and sometime prior to that time, we had been planning for the receipt of 20 airplanes, as I recall it, Mr. Leslie suggested that maybe it should be a considerably lesser number, and—

Q Lesser than 20?

A Yes, and Mr. Fellows took a very strong position that the minimum number we would want would be 20, and while I can't recall exactly, it would certainly have been compatible with my thinking, and I can't say I did this, had I expressed the thought that I would like more [13673] than 20. I don't remember that there was any particular point to this discussion. I don't recall that we were—a decision wa in the making, so to speak. In fact, I don't specifically recall that this had any importance at all, but I remember something like this occurred.

Q Would you like to express yourself a little differently, Mr. Rummel?

A No, I don't think so. It seems to me it is clear.

Q Referring to Defendants' Exhibit 155, the bottom of page 1—these are Mr. Thomas' notes—the following appears:

"Shortly thereafter Dillon, Read was engaged by the HTC," that is the Tool Company, "to develop a permanent financing plan.

"The commitments of the HTC for jet aircraft at this time was for thirty-three Boeing 707s and thirty Convair 880s. I had stated several times that I thought the airlines

had overbought on jets and recommended that the HTC cut back on some of those orders if they could."

My question to you is did these views or comparable views of Mr. Thomas ever come to your attention at or about that time or subsequently?

Mr. Barr: Would you specify the time? The [13674] time referred to in the memo—

Mr. Davis: The time as reflected by what I just read. That is why I went to the trouble of reading the prior sentence, that "Shortly thereafter Dillon, Read was engaged," and "Shortly thereafter" in the memo refers to after the First Boston Corporation was involved in the financing.

We will be able to establish in the record, if you don't know, when it is that shortly thereafter Dillon, Read was engaged by the Tool Company.

Mr. Barr: I don't think that is what it says, Mr. Davis, I don't think that is what the memorandum says.

Mr. Davis: I read what the memorandum says.

Mr. Barr: That is why I want you to specify what time you are calling for in your question.

The Special Master: His question calls for ever.

Mr. Barr: At any time? Then I have no objection to it.

Mr. Davis: I am asking if those views ever came to the attention of this witness, whenever those views were expressed by Mr. Thomas.

A I am quite sure that Mr. Thomas expressed the view [13675] that TWA would not have need for thirty Convairs. I do not recall Mr. Thomas having expressed the view that the Hughes Tool Company had overbought as such. I don't remember anything in that context.

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[Testimony — October 2, 1962]

[13723]

* * *

Q Mr. Rummel, have you had an opportunity of examining what has been marked as Defendants' Exhibit 160, and inform us whether or not those pages represent all of the notes which early in your deposition you identified as being all the notes that you had kept?

A I am quite sure, Mr. Davis, that I made many more notes than indicated by these pages. Through the years I simply had everything turned over—files—and searched personally beyond that. Just what in fact remained in the files or in existence at that time, I don't know.

Q My point is, you don't have any recollection of having seen recently, or there being in existence some notes other than what has been marked Exhibit 160?

A No, I sure don't remember any, but as I say, we just turned things over. I don't remember seeing these recently.

[13724] Q These notes are notes in your handwriting, are they not?

A Yes.

Q Look at the upper right-hand corner of the first page and you see in parenthesis, those are your initials. Did you put that there?

A The initials do not appear to be mine, no.

Q Do you know whose handwriting that is?

A Nor does the date.

Q The date "1956?"—you don't know who put that on?

A No. Nor I might say the 650 in the upper left-hand corner doesn't appear to be mine, nor these hieroglyphics in the lower right-hand corner.

Q Will you first tell us what these notes reflect? What are they? When were they taken, and on what occasion,

and like information? Can you describe what these notes are?

A I will try. The first page entitled "Management's Position" refers to the results of the meeting with management, at which time the 880 program was discussed.

Q This was in Kansas City?

A In Kansas City, in Mr. Collings' office. The objective at the time was to determine whether or not TWA [13725] would go along with the 880 program, as I have testified to earlier.

Q Were these notes taken at the time of the meeting itself, or were they notes that you made after the meeting—do you recall?

A That is what I was about to get to. The second page, as I recall it, was made during a phone conversation with Mr. Collings, who had considered more fully what was said during the meeting by everyone, at some interval following the meeting.

I think he called me the same evening, giving his position which reflected, as I understood, the consensus of the meeting.

I believe the first page is written in a more orderly manner immediately following this call what I had scratched down on the second page during the call.

Q Let me see if I understand you. The first page reflects in a more orderly fashion the notes reflected by the second page, being notes of a telephone conversation you had with Mr. Collings following this Kansas City meeting, is that correct?

A That is my recollection.

Q Does the third page relate to the same event, or does that relate to something else?

[13726] A It relates, I am quite sure, to something else.

Q Before we go into it then, may I first ask you to read into the record the second page, namely, the notes of

your telephone conversation with Mr. Collings? It is not too legible to me, and it would be helpful, and then I will ask you to describe the telephone conversation. I will give you an opportunity to describe what it means, but first would you read into the record what appears on this second page?

Mr. Williams: Start at the top.

Q Starting at the top with the word "Management."

Mr. Williams: The very top line is "Convair Notes." Is that your handwriting?

The Witness: No, the word "Convair Notes," my initials and the 1956 with a question mark beside it, are my notes. Some of it is not too legible to me, but I will try to read it here.

The top of the page in the center is the word "Management's Position."

Then "Not interested at $4 million" on one line with a check mark to the left, a bracket to the left that connects it down with another bracket to a sentence that starts "Economics," I believe.

However, right under the sentence I read is [13727] this statement, "Is definitely interested at $3,100,000, or a comparable figure."

Then the bracket sentence "Economics very marginal."

Then it appears to be "Characteristics of"—

Q Competing airplane?

A It looks like it might be "competing," but it looks like there are too many T's in the word. I would guess it is "competing airplane from short-range basis has"—and I can't tell whether it is "impaired" or "improved." It looks like the last word could be "material." I am not certain of that. I think it is probably "material."

Right under the word "short" is something. It is something that I can't make out.

Q Is it because of the legibility of your copy, or is it because you cannot read your notes?

A Because it is my handwriting. In any event, there is three sides of a box around what I just read, but excluding the first line "Not interested in $4 million."

Then after that it seems to say "Think it the best airplane, particularly if purchased in the realm of $3,100,000."

Then the next says "Think market is limited, but on information that Pan American will buy thirty, thinks [13728] Convair may sell 150 ships, and therefore recommend going forward with the deal."

I see there is an underline under "recommend going forward with the deal."

Then it continues, it looks like a dash "provided contract is changed as discussed this afternoon—"? I can't make it out, but it might be "similarity of—"

The Special Master: Type?

The Witness: Yes, it would be "similarity of type."

A (Continuing)—Then another sentence: "Would not go along on any basis if not changed."

Q That is now the entire notes that you took of that telephone conversation, is that correct? The first page is something that you prepared after the telephone conversation?

A As I recall it, Mr. Davis, these are the only notes taken while I was talking, or while I was listening to Mr. Collings, and as I recall it it was more or less immediately afterwards. In looking at the notes and recalling what was said, I put it in somewhat easier form to follow.

Q As I understand, there was a meeting at Kansas

City, which you have already described, and attended by the people whom you have already identified?

[13729] A Identified part of them, yes.

Q To the extent to which you could?

A Yes.

Q And then thereafter, the next day, or within a day or so, you received this call from Mr. Collings, is that correct?

A No, sir. I think I am quite sure it was the same evening.

Q The same evening?

A Yes, there was urgency attached to all this. Mr. Hughes wanted an immediate answer, as I recall it.

Q Mr. Hughes wanted an answer to what?

A As I indicated earlier, Hughes had asked whether we thought we should go ahead with the Convair deal now that it was in its last stages of negotiations. I don't recall the specifics, but my impression is I said "Before answering that, it would be good to talk to others in TWA."

He concurred in this, as I recall it. He may have suggested that I talk to others in TWA. I am not positive about that thing. But in any event, a meeting was then called by me, through Mr. Collings' office. He actually called it—to review the airplane, the deal, the extent to which we could review it, and to obtain from TWA a recommendation as to whether or not Hughes should go [13730] forward with the Convair deal, as I recall it.

This summarized the results of that meeting, after Collings had time to mull it over some, whereupon he called me. I think it was the same evening of the meeting, as I recall it.

Q After the meeting, Mr. Collings called you for the purpose of giving you the position of TWA's management, so that you could transmit that information to Mr. Hughes? Was that the purpose of the call from Mr. Collings to you?

A He called to give me the results of the meeting, which I took as representing the TWA management's view, and whether or not Hughes should go ahead with the Convairs.

Q One thing I am trying to determine is whether or not Mr. Collings was telling you in substance what it is that you were to report to Mr. Hughes.

A Yes, he was telling me what I should report to Mr. Hughes.

Q After this telephone conversation you prepared the notes which are reflected on the first page of Defendant's Exhibit 160, is that correct?

A Yes. As I recall it, that was right after.

Q And then you transmitted that message or communication to Mr. Hughes?

[13731] A I finally did. Mr. Hughes made numbers of efforts through Bill Gay's office. I don't recall whether it was Bill Gay or others in the office, but I recall being called to try to locate Mr. Collings, but was unable to do so. I don't recall where he was at the time, but they tried various clubs around town, and his home, and other places that occurred to me he might be at.

As I recall it, Hughes was unable to get Mr. Collings, and being unable he then called me, and I related to him what is on this first page, as I recall it.

Q What appears on the first page are the notes that you had before you when furnishing the information to Mr. Hughes as to TWA's management position?

A That is the way I remember it now.

Q Looking at what appears on the left margin of the first page, you see the word "save," and next to it "telephone conversation with—" some initials?

A JAC—John A. Collings, and me.

Q Is that in your handwriting?

A Yes.

Q Was there a particular reason for writing "save"?

A The only reason I recall is to have a record available of what the results of the meeting were. The other words "telephone conversation with JAC" is simply what [13732] the memo says—how it was arrived at.

Q Looking at the first page I see Item 1 reads "Not interested at $4 million."

What did that mean?

A That means that TWA was not interested in having 880s if they cost $4 million.

Q And that is what Mr. Collings told you for the purpose of passing it on to Mr. Hughes?

A Yes.

Q At that time was there a price being discussed with Convair for these 880s, or what was the then information known as to price?

A As I recall it, we did have figures on the base price of the airplane then. I don't recall at the moment what it was. We had not completed our negotiation for the price of change orders.

Q Item 2 reads, "Thinks it is best airplane for TWA if purchased in realm of $3,100,000." Who thought that?

A The group.

Q The group?

A Yes, as relayed to me by Mr. Collings. I can't tell who in the group. This was, as I took it, the results as Mr. Collings gave it to me.

Q You see on the second page the line reading "Is [13733] definitely interested in $3,100,000 or a comparable figure."

That was Mr. Collings speaking to you, wasn't it? It was Mr. Collings saying to you he was definitely interested?

A He, speaking for the group, and I presume for himself too. I don't know that that distinction was made.

Q How did this $3,100,000 compare to what Convair

was quoting? Was that the advice that Mr. Collings was giving as to what the price should be for the aircraft?

A I think Collings was saying that is what he felt the price should be, as I recall it, and I don't recall the specific number, but I think the price Convair was then offering was substantially above $3,100,000—close to $4 million, if not over it.

Q What was the base price eventually arrived at with Convair for those 880s, or as a result of this attitude?

A We finally negotiated a price, including changes, of over $4 million—it was $4,100,000, as I recall it.

Q Do you see Item 3?

A Yes.

Q Which reads, "Thinks market is limited, but on information that Pan American will buy thirty, thinks Convair may sell 150 ships and therefore recommends going forward with the deal provided contract is changed to [13734] exclude 'fundamentally dissimilar' and substitute 'outgrowth of design.'"

That again, was that what Mr. Collings was thinking, as reflected there?

A I would say it was the thinking of the group. It certainly was what he expressed. In this case I think that final part "It is fundamentally dissimilar," and the design phraseology was discussed at the afternoon meeting that I attended. I think that was the significance of the next to the last line on the second page.

Q Was that for the purpose of evaluating this so-called rebate provision that Convair was offering?

A That was covered earlier, I believe, Mr. Davis. We wanted to be sure that the rebate provisos included all derivative designs, and I don't recall at the moment whether we wound up with the words "outgrowth of design" or the words "derivative design," but in any event, the point was finally won with Convair, so the rebate we

covered, one thousand airplanes, would cover not only the 880, but any airplanes that evolved from or grew out of it.

Mr. Davis: May I have marked for identification at this point this telegram dated September 20, 1956, to Mr. Price, vice-president of Hughes Tool Company, [13735] from Mr. Joseph T. McNarney, president of Convair.

(Telegram dated September 20, 1956, to Mr. Price, vice-president of Hughes Tool Company, from Mr. Joseph T. McNarney, president of Convair, marked Defendants' Exhibit 161 for identification, as of this date.)

By Mr. Davis:

Q I note in that telegram from Convair to Mr. Price of Hughes Tool Company the expression is used there "The airplane described by Exhibit A to the purchase agreement and any outgrowth or derivative of that airplane are equally included for all price adjustment purposes contemplated by this letter."

My question is, Mr. Rummel, whether you know the extent to which negotiations with Convair were carried on in accordance with the recommendation made by Mr. Collings and his group? Do you know if that is what took place?

A Yes, I participated in some of the negotiations that followed the meeting of the group, and I am quite sure that I was involved in discussions with Jack Zevely on this point. The point was finally won. I don't recall this wire as being the final position of Convair. I am not sure whether it was or not, but as I recall it, we wound up with somewhat better coverage with respect [13736] to military airplanes than this wire indicates.

Q Before you were not quite certain as to when this meeting in Kansas City took place. Is it a fact this meeting

and conversation you had with Mr. Collings was some time prior to the date of this telegram, which is dated September 20, 1956?

A The Kansas City meeting, Mr. Davis, as I best recall was held relatively close to the time that the contract was finally signed. Following the meeting and signing was a flurry of negotiations covering the specific items, at least some of them, that were included in management's position, but covering other items, open ends of the negotiation that existed at that time. I don't recall specifically though the date of the meeting, but it would have been in that approximate time period.

Q What was the basis for the information that Mr. Collings was referring to, to the effect that Pan American would buy thirty 880s?

A I don't know. My best recollection is that Pan Am had not decided to buy thirty airplanes at that time. That Convair was negotiating with it and felt that it probably would. I don't recall advice to Collings that Pan Am would or would not, but simply that they were interested in it. [13737] This reads to me now as if he was qualifying our purchase of airplanes on Pan Am buying the same ones, so as to further insure rebate provisions. I think, as I recall it, he felt that if Pan Am and TWA bought, the airplane would be quickly established as a type, and the Convair sales probabilities would be improved.

Q I am trying to relate that to your testimony which perhaps I didn't understand very clearly, as to the desires of Mr. Hughes, of having an exclusive on the Convair product. It is not clear to me what discussions were going on between Convair and Pan Am for thirty 880s during this period.

A Hughes got the first 40 positions that we negotiated working with Hughes for the rebate proviso. It was to the ultimate interest of the Tool Company to have large numbers of these airplanes sold.

Q Did Hughes have the first 40 positions before there was a letter of intent executed?

A What I referred to as a letter of intent, Mr. Davis, was a preliminary paper that was signed considerably before this period of time. It was a shell sort of contract, so to speak. Between the time it was signed and the final contract signing, both the specifications and the contract were worked out in detail.

[13738] Q I appreciate that part of it. I am trying to place in perspective these conversations between Convair and Pan Am which led Mr. Collings to believe or think that Pan American was going to order thirty Convairs. That is what is not clear to me.

A As I recall it, during the afternoon's meeting, either Rourke or myself, possibly one of the fellows from New York, I am not certain, indicated that they understood that Convair—excuse me—Pan American was interested in thirty airplanes. In any event we knew from Convair, that is, Rourke and I, that Convair had been working with Pan American in an effort to sell 880s.

Q That was something that was taking place while you were working with Convair with respect to the configuration, specifications of an 880 aircraft for TWA?

A As I recall, this was taking place some time during the period of signing the initial letter of intent and the final contract, yes—if that was your question.

Q If I understand you correctly now, following the execution of this letter of intent between the Hughes Tool Company and Convair before a definitive contract, during that period of time Convair, to your knowledge, was making efforts and negotiating with Pan Am for selling Pan Am thirty similar aircraft?

[13739] A Yes. I am quite sure they were also making efforts to sell others during this same period of time. I recall on several occasions that Jack Zevely asked me to

prevail upon Hughes, if I could, to release early delivery positions to others so that Convair could broaden their market base, and sell airplanes.

I remember Jack mentioned that he had tried this a number of times with Hughes, and had been unsuccessful.

Q To obtain a release of the early delivery positions?

A Yes. Some of the ones that Hughes was interested in. I am at a loss though to identify exactly what customers he was talking about now. It might well have been Pan Am. I just don't know now at the moment.

I remember Convair was anxious to sell Pan Am, and wanted to offer attractive positions relative to what other manufacturers could offer.

[13740] Q Do you know what happened to Pan Am's interest in those aircraft?

A They never bought them, Mr. Davis.

Q Was it about that time that Pan Am placed an order with Boeing for Boeing aircraft, do you recall?

A By this time, that is, by the time this management memo was written, Pan Am had already purchased, or placed its initial Boeing order, and I believe also its initial Douglas order. As I recall it, these two were placed simultaneously. Well, it would be supposition on my part to try to comment as to when Convair first talked to Pan Am on this airplane—I don't know. I would think it would be between roughly the time of the letter of intent and this period.

Q Item 4 reads "If contract is not so changed, recommend not purchasing these aircraft."

Again, this was the recommendation of Mr. Collings, or of the TWA management group?

A Yes.

Q And the change referred to this rebate proviso?

A Well, and the price.

Q And the price?

A Yes, I think that would cover that. I don't remember 30 for Pan Am other than in relation to the [13741] rebate.

Q Then the last item that appears reads "Added items —CAA insurance for 20"—

A For $20,000 to $25,000, but would not hang deal up on this.

Q Does this page reflect the substance of what you told Mr. Hughes?

A As nearly as I can recall it, I told him quite faithfully exactly what my understanding of the meeting was, and that would be on this page.

Q And you told him what Mr. Collings had told you on the telephone?

A Yes.

Q What did Mr. Hughes say to all this—do you recall?

A I recall that following the conversation, we went to work in a number of areas to obtain, or let us say, to make as much headway as we could, to accomplish what was being asked. I don't recall any major efforts of any kind to change the base price of the airplane following this discussion. I recall we discussed price relating to change orders, and in that respect we did successfully negotiate, at least to the extent of saving around $3 million on the changes. That is for the group of 30 airplanes.

My present belief is that by the time this meeting [13742] was held, the base price had been established. I don't remember just what it was—between Hughes and Convair.

I don't recall specifically what Hughes said with respect to the request for $3,100,000.

He agreed completely and fully on the rebate proviso aspect. I seem to have a recollection that we had tried to negotiate this kind of a phrase with Convair before this meeting, and had not succeeded, and one of the points here

was to reinforce our position and open up again, because it was a TWA request. I am not sure of that, but that seems to come back.

The CAA insurance was the price being asked by Convair to insure, if you like, taking care of certain categories of changes which might come about from unforeseen or late changes in Federal regulations. At this particular time some of the Federal regulations had applied to turbine jet developments, and were still in the formative stages, as I recall it, but to a much lesser extent than at the time we signed with Boeing.

I don't recall whether we purchased that protection or not. I somewhat have the impression that we did not with Convair, but I am not sure of that now.

Q Have you told us all that you can remember as to Mr. Hughes' reaction, and what he said when you passed on [13743] this information to him.

A I am not certain of this. I seem to have some feeling that he felt that the $3,100,000 was something unattainable. That he had already been there in these discussions with Convair, and the price was higher, but I am not sure exactly and precisely what was said in that connection.

Q Is there something else you are trying to think of?

A I was just trying to think of what else occurred at that time. That is all that comes to mind at the moment.

Q Now, turning to the third page of what has been marked as Defendants' Exhibit 160, can you first tell us what those notes refer to?

A I can tell you what they suggest to me, or what they might have referred to. I am not sure just what they referred to. This appears to be some sort of a quick or summary evaluation, if you like, of the added length of fuselage per passenger per seat row.

Q Of the Convair 880?

A. That is what I don't know. At the top of the page

it says "Convair," but it is not in my writing. The 880 did grow in fuselage length from the time of the initial Convair proposal or presentation in Seattle, until we [13744] finally concluded the negotiations. I don't remember if it grew one seat row or two, but it did grow. This may have related to that.

I might explain that the Boeings also grew, and we had similar analyses. I would assume that since it is in the file it related to Convair, but I see nothing here that proves that.

Q Turning to the next page, the fourth page, which is entitled "Rebate Schedule," is that also in your handwriting?

A Yes, sir.

Q Can you tell us what those notes represent?

A I can't be certain, but I am quite sure they relate to instructions received from Hughes in one of the discussions subsequent to the report of this management meeting. I said there was a flurry of negotiations, phone calls, and some wire exchanges, and things of that type that occurred during the final stages prior to signing the contract. This looks like it related to a call I had received from Hughes.

Q Following the recommendations of TWA management?

A Yes. As I say, at the time of those recommendations, there were certain items that were still open that were being negotiated, that we had not concluded on. Our negotiation encompassed those, as well as an effort to [13745] accomplish the recommendations from TWA.

Q So that looking at item 1, which reads "Wants the $22,795 figure for interiors taken out of the base price now."

That reflects what Mr. Hughes wanted you to do in your negotiation with Convair, is that correct?

A That is what this appears to be, Mr. Davis. I don't

actually recall that particular discussion with Hughes. Wait a minute. I did have a discussion with Howard on primarily the windup on the handling of the cost for changes. There were many, many changes negotiated during the course of the detail specification negotiations. There were many, many requests for changes—

Q Requests by whom?

A The TWA group. This was all in an effort to build the airplane to comply with our requirements. There were many requests from the TWA group for changes which we could not know whether the requested change was really desirable or worthwhile, or not, until we considered them in the light of the price Convair was asking for that.

This grew a little complicated because some changes were contingent on others.

We didn't take a final position with respect to what changes we really wanted until we had all of the data [13746] from Convair on all of the changes in which we felt we had an interest in. At that point we evaluated the changes in light of the asking price, and arrived at a conclusion as to what we had wanted.

As I recall it, Convair threw an interior change in the base price, and this is just simply something that wasn't right. It appears here as if I discussed this with Hughes, and he concurred, and he suggested that this come out, and bracketed the rest of the changes that were being considered.

Q Look at item 2 which reads "Wants the $84,000 ($83,800) added rebate (was $106,600)."

A That is what it appears to be.

Q "Spread over 70 to 100 ships. Had suggested 70 to 90. 'Convair suggested 81 to 100."

A I think it's 80. It might be 81. Mine is blurry here.

Q "Fair compromise is 70 to 100. This must be same category as the $250,000."

A I can't read that.

Q "Not dependent on best—"

A Looks like "Not dependent on" something here. I shouldn't be surprised if it meant to say "best efforts." I don't know what that word is.

[13747] Q Would this again reflect advice or instructions from Mr. Hughes as to how to conduct these negotiations?

A Yes. As I am reading this, I believe that was the case all right, that he was giving specific instructions, perhaps conclusions based on discussions that I was having with him on these points. I believe this was the resulting instructions, if you like, or the position he took at the time as to how to proceed in these areas.

Q Item 3 I am having difficulty reading. Perhaps I ought to let you read it. What does that say?

A "Wants provision that money rebated to Convair by G. E. on sound suppressors and silencers will be rebated to Hughes Tool Company. Zevely advised Howard that the Convair deal provided for lower price and rebate to Convair if additional units ordered."

Q Can you tell us what that is about?

A Not very fully. As I recall it, this particular one was news to me at the time. However, I am not completely sure of that. I don't recall at the moment being aware prior to this, although I might have, because it was long ago—this rebate angle with respect to G. E.

Q Zevely was with Convair at the time, is that correct?

A Yes.

[13748] Q A sales representative, so to speak.

A I think Zevely was then in charge of Convair sales, and either then or shortly after that was made vice-president of sales for Convair.

Q Again—

A He was also in charge of contracts.

Q This was information that Mr. Hughes was giving you?

A I am a little fuzzy on this. Certainly the part that Zevely advised Howard must reflect that Howard is telling me that he had an understanding with Zevely that would bear on this question. I am a little fuzzy on item 3.

Q Look at item 4, can you read that into the record?

A Item 4 says "Nonrecurring cost for changes in change order No. 1, TWA has agreed to pay $124,700 for changes. Convair has agreed to rebate"—it looks like rebate, but I don't see where the word fits.

Q May I suggest "Convair has agreed to rebate $106,600 including $22,795, which are the figures you find in items 1 and 2 above"?

A Yes, that is what it appears to say, Mr. Davis. However I don't see that the word "rebate" fits the circumstances that existed. It might have been "delete" but I don't see the "D."

[13749] Q Look at item 2. Isn't it the truth that Mr. Hughes was instructing you that the $84,000 of an added rebate be added to the $106,600?

A Yes, it does, and I am confused as to what that rebate was. This seems to read "has agreed to rebate $106,600 (including $22,795). TWA has agreed to pay 54 per cent." This paper is speckled, and the lines aren't very clear.

I can see the 54 per cent clearly.

"Therefore, 54 per cent (say 50 per cent) of nonrecurring costs should be returned for changes listed in change order 1, in order to be consistent."

Q Can you tell us what that was? What does that refer to?

A I just don't remember the particularity now, Mr. Davis, except this was part of these final negotiations with Convair.

Q What does it mean when you say in there "TWA has agreed to pay"? Does that mean you had discussions with Mr. Collings or the management group?

A Oh, no. As I recall it, it simply means that the changes that TWA wanted, and that we felt were reasonable, amounted to $124,700. I don't remember the particularity, but it might well have been that I indicated to Convair [13750] that at least that amount of the changes were reasonable, and that we would want that included in the contract. But I don't recall any discussions with Collings in this area at all.

Q So at that time TWA agreeing that its views and Hughes Tool Company's were interchangeable at that time?

A We were winding up a contract—I and those who were working with me—between Hughes Tool and Convair, and the basic charge was in a way agreeable to TWA. We had many TWA people involved in that process, and now we were at the windup stage where we had to fish or cut bait.

This was a charge—I think this was Hughes' endeavor.

Q Does that reflect an agreement that you had reached with Convair when the note says "TWA has agreed to pay"?

A I think it is the way it is written, Mr. Davis. At least I would be awfully surprised if I had come to any firm agreement with Convair, but would believe at this time that I probably had simply indicated that I would recommend to Hughes that these particular items be accepted. But I don't remember it in that detail. I would be surprised if I closed any doors.

Q When you say that TWA has agreed to pay 54 per cent, or say 50 per cent, what does that refer to?

A By golly, I just don't recall that. It sounds like [13751] it might have been an offer to pay half of what Convair was asking.

Rummel Deposition.

Q Now turning the page, I see a number of calculations. Can you identify what those calculations deal with and what they relate to?

A Not without looking beyond this particular piece of paper. It suggests to me that $3,750,000 was a base price of some kind, and that if we bought the CAA insurance it would add $25,000, and that if the interior item of $22,900 was deleted the base price would be $3,752,200.

Q Then you see the computation that was made where I see the figure $83,800, or 798, and then again there is $22,795, and a circled figure of $106,588, and then I see another calculation that comes down to $231,340. Then I see the word "changes, TWA accepts as proposed, Convair accepts."

A As I recall that now, and I am still a little fuzzy on this, Mr. Davis, but I believe "TWA accepts as proposed" is simply that I proposed to accept those, thinking that these were priced fairly, and that they were reasonable, and in the negotiations with Convair which I had conducted right on through, our effort was to obtain things at a fair and reasonable price—that among the total of proposed changes that we were interested in that I had told Convair, [13752] I and my people, offering free, if you like, $22,795 worth of changes. In other words, they were accepting that obligation, and I proposed to accept the $40,959.

It might have been indicated to them that we would go for the $40,959, which, of course, then left $167,586 open. Hughes may have asked me what was acceptable, and I might have responded by saying $40,959—what the $167,586 appears to be here, in arriving at a number, $83,798 or 50 per cent—I do recall calling Jack Zevely when he was in New York on his way hopefully to a conference, or something, in discussing the reasonableness of our only paying 50 per cent of these items in dispute. It appears this was simply a thing that I did to arrive at numbers that I would use in continuing the negotiations.

Q Looking at the figures at the upper left-hand corner of that page, I see $3,141,200, and then under that $3,118,400, giving a residual balance of $22,800. If I recall you have identified that as being some interior items. I am just wondering what did that $3,141,200 represent?

A I don't know what that was.

Q That would suggest to me that was some base price for the aircraft, and that is how you arrived at the $22,800 for interior items.

[13753] A The reason I don't think it was the base price arrived at—I seem to recall that all of Convair's base prices were in round numbers, and that probably this is the $3,750,000 at the time this was going on. I don't remember any base prices having any figures in the hundreds.

Q Can you tell me what that figure of $231,340 represents or reflects?

A The $231,340 was, as I recall it, what Convair was asking for the changes that we remained interested in at this stage.

Q Now turn the page which is headed "Tell Zevely." These notes appear to go on for a number of pages. Those are also in your handwriting?

A Yes, sir.

Q First, can you read for us into the record what is contained in those notes?

A It says "HRH tried to get him all last night and today. Tried to get him in office, but I"—I am quite sure that means he "I was in meeting—HRH was in meeting two hours and then could not get Zevely."

Is there a clearer copy of this around here?

* * *

[13755] Q Can you read the notes which start with the page entitled "Tell Zevely"?

A I believe I had read down to the phrase that ended "Then couldn't get Zevely," if I recall correctly.

The next line I don't understand. It appears to say "HRH writing or call for Zevely." Then it looks like "didn't"—I can't make the next word out—is or us—and going on beyond there "Calling Zevely on Hughes' behalf, and Hughes' inability to reach him. Will call him [13756] tonight." Then it looks like "feeling of what would be a fair proposal."

The next page starts out "is firm proposal—and Hughes."

Item 1 is "On specifications—we conceded $34,000. Have conceded $22,000—Hughes suggests recommend and propose all of the rest of the items be cut in half including the $17,000 he proposed.

"2. On delivery—want two months back—urgent on basis of need for 1960 summer operations." 1960 appears to be blocked in here. "Understood they were proceeding at full speed. That is why we paid $1 million.

"3. Will waive CAA"—I don't know what that word is.

Q Risk?

A Yes, risk. "Think Convair should take it but—

"4. An allocation of deliveries with Delta—HRH will settle with Woolman. Don't freely"—the next line is "Jack promised HRH that Convair would not enter into it. HRH is regretful that he entered into it. Will settle with Woolman, not Convair.

"5. Design outgrowth must be the way we want it.

"6. Wording will have to be reviewed. Are [13757] willing to agree to a simple change in language which would not"—I think it is supposed to be mathematically—"determines answer now. We should get adjustment. Will be happy to submit some simple language which will be fair and impartial. Can't be position of letting Convair decide it." I suspect that means to be in the position.

"7. Five years limit on interest to be deleted.

"8. Gold color, side letter O.K."

Q Is that the end of it?

A I would guess so, Mr. Davis. I can't tell whether the next page is part of it or something detached.

Q Can you tell us the circumstances under which these notes were taken? Was this in a telephone conversation you were having with Mr. Hughes?

A I am quite sure it was, because of the way they are written.

Q Can you tell us whether or not this was before or after the Kansas City conference and the report you made to Mr. Hughes as to the position of TWA's management?

A I believe it was after the Kansas City meeting. As I recall it, this was during the late windup of the contract.

Q Did you contact Mr. Zevely and in effect carry [13758] out what is described in these notes?

A I contacted Mr. Zevely and did my best to carry them out. Some points we won and some we didn't.

Q In Item 8, this reference to a side letter O.K., what does that refer to?

A Mr. Davis, I do recall this. The first that I heard of the phrase "shimmering gold" was when I read it in the newspapers, at the time the announcement was made. I then checked with Convair people whom I had been dealing with to find out if they knew about the shimmering gold, and it turned out that some of the Convair publicity people had been in touch with the Hughes publicity people, and somehow between them, and with Hughes, "shimmering" was invented, and it was decided to be somehow a part of the airplane.

I felt I should understand whether or not Hughes wanted anything on this memorialized, or not. I recall that I raised the question, and he said it would be all right to put in a best efforts type of side letter. The technical facts were then that no one knew how to produce matching

shimmering gold. So the side letter with this concurrence took the form that Convair would continue to study this and see if it could produce the shimmering gold.

Q This related to the outward appearance of the [13759] aircraft?

A Yes.

Q In Item 2, what does this reference "That is why we paid $1 million"—what does that refer to?

A I draw a blank on that, I am afraid. I have a vague recollection, I mentioned earlier, that at the time the side letter—I am sorry, but at the time the shell deal or letter of intent, or whatever an appropriate description would be, was signed, that about that time or at that time a paper was signed which held Convair harmless with respect to cost it would incur up to a certain amount during the study or specification of the contract negotiation period. I don't know if it is referring to that or not. I don't recall that figure being that high, but I don't remember exactly what it was.

Q Referring to the next page of your notes, which is also in your handwriting, isn't that so?

A Yes, this is my handwriting.

Q That is entitled "Original Schedule" and then there are two columns, one which refers to "Deltra requested" and then the next column is "Present, TWA."

A What item is that, sir?

Q The following page.

A Item 4? Following the entire memorandum?

[13760] Q Yes.

A Yes, that is in my handwriting.

Q Can you identify and describe what it purports to be?

A I am not certain what the column "Delta requested" is as it appears here. At one point I remember that the Delta representative who was working on this deal with

Convair and with ourselves had indicated that because of Delta's DC-8 delivery, and because of the seasonal requirement that it had, it didn't particularly want airplanes in November, as I recall it, but would be satisfied with a subsequent schedule. I am not saying that is what this is, but I recall that happening, and this could be it. I don't remember. I am speculating now. I don't really know what this is at the moment.

Q Have you any recollection as to where you got the information which is reflected by these notes, or what do those notes purport to reflect?

A It shows that the original schedule gave us an airplane in November 1959, one in December, two in January, two in February, three in March, four in April, and so on.

The memo mentions a two-month change. It is my recollection that at one point Convair simply one day advised that the delivery schedule was now two months back [13761] of what it was. This is what was referred to earlier when he said we would like to have the original schedule maintained so that we could have airplanes in effective service during the summer of 1960, that is, a fleet-size operation.

I suspect that the schedule here is the schedule—I am not really sure of it, but I believe it is the schedule we finally wound up with, and I am not certain on this either, but I believe that the two months was put in and then taken back out at the last minute, but I am not sure about that.

The schedule on the left is for forty airplanes. In other words, it would include the Delta airplanes, and the schedule on the right—Delta requested—must have indicated the best information I had with what Delta might be satisfied with, or what someone thought they would be satisfied with. I don't recall having discussions with Delta representatives, as I have described earlier.

The right-hand column "Present, TWA," I don't identify it. It appears to represent more than a two-month slip, but maybe nominally a two-month slip. I notice there is a column TWA tied down to the original schedule for forty, but that it does not add up to the "Delta requested" column.

[13762] Q If you look at the extreme left, you will find that there is another column indicating when Delta would obtain its ten.

A At the extreme left, you say?

Q Looking under "Original Schedule," let me put it to you this way: Is it your recollection that the original schedule negotiated with Convair contemplated forty 880s with deliveries to begin, one in November 1959, one in December 1959, and thereafter additional aircraft until the entire forty were delivered by September 1960?

A That is my recollection of what we wound up with.

Q It appears under the heading "Original Schedule"?

A I see that.

Q And then you see to the left of that schedule there are some under a word which I can't make out on my copy, but which would indicate out of that delivery schedule, the first one to go to Delta would be January 1960, the next one would be in March for an additional one, and then two in April, and then one in May, June, July and August of 1960, and the final two in September 1960, making a total of ten, which presumably were to go to Delta. Is that the way you read that schedule, Mr. Rummel?

A That particular column when it is added to the TWA column at the right in that grouping equals the total [13763] produced each month. Since there were forty, and since we were going to get twenty, and Delta ten—

Q The right-hand side, under the TWA column you see the thirty that were to be delivered to TWA beginning in November 1959 through September 1960?

A Yes.

Q You referred to an announcement by Convair of delaying everything for two months a moment ago in your testimony, or advancing it two months, I believe is the way you put it. I am trying to understand what that means. Looking again at these same notes, you see that the same forty aircraft are now divided between TWA and Delta, but the first one begins in January 1960 rather than November 1959, and the delivery schedule then progresses through November 1960 rather than September 1960. Do you see that?

A Yes. The right-hand grouping here appears to simply be the left-hand column in the first grouping and the right-hand grouping in the first column, simply displaced downward two months.

Q That's correct. I am trying to understand if this reflects the announcement of Convair that the entire program would be delayed two months.

A What happened here, Mr. Davis—there wasn't any [13764] announcement in one sense. It was simply that Convair advised us one day that because of a reevaluation of their capability to produce airplanes, they would have to put the schedule back two months. This was met with considerable resistance. We didn't want it put back two months. As I recall it, partly as a result of last-minute negotiations Convair again reevaluated its capability, and returned to the original schedule.

Q Can you tell us whether or not this schedule as reflected by these notes was something which occurred during the period when you were negotiating the definitive contract with Convair?

A I didn't get the first part of that.

(The question was read.)

A I don't recall whether the letter of intent had this original schedule in it or not, Mr. Davis. It might have.

Certainly there was some sort of delivery anchor in it, but I don't recall what it was.

Q I appreciate that, but I am trying to establish whether the notes reflecting this information about the original schedule, and this revision, was that something which took place during the period when you were negotiating with Convair?. Can you give me an approximate time as to when these notes were made?

[13765] A Not definitely, but it appears to me to tie right in with Item 2.

Q Of the conversation you had with Mr. Hughes relating to what you were to tell Zevely?

A Yes.

Q That is all I am trying to establish at this point.

A That would certainly appear to be the case, Mr. Davis. I misunderstood you. I thought you were asking when Convair had forwarded these schedules in contrast with when I had written this particular page.

Q Now will you turn the page and refer to the next group of notes?

Are they also in your handwriting?

A Yes.

[13766] Q Can you read to us what those notes say? First can you identify what is involved in these notes? What do they purport to reflect?

A I suspect this was a subsequent discussion with Mr. Hughes following the discussion with Convair—following the earlier discussion with Hughes. It says "A. Rebate Schedule—no—complies in every respect except 1. military production, 2. dissimilar models, 3. limitation on interest for five years."

Now that I read this, I don't believe—let me go on, but I believe now it was not as a result of a call to Hughes.

"1. Nothing more than an agreement to agree with things slanted against us.

"2. It does not say that 'outgrowth of designs are to be counted.' No definition of what 880 is for purpose of rebate schedule.

"3. Was unlimited (rebate money) no time.

"West—'the contract is satisfactory to me except the rebate schedules we have discussed' "—with an arrow pointing up to what I just read, items 1, 2, 3, followed by items 1, 2, 3.

Then it goes on:

"Measures up well satisfactorily and normally to [13767] other contracts."

Then a note that is detached from West, that says "Allocation of ships between Delta and TWA."

Then a note "JAC—hang the deal up on 'outgrowth of design language'."

I believe these are notes, at least to a large part, were made as a result of a discussion with Mr. West. It appears in this discussion he clarified existing rebate language. I would say it is a pretty safe thing to assume that the comments concerning whether or not the contract was satisfactorily and measured up normally was in response to a question I put to him for Hughes, because in numbers of cases before Hughes finally decided to buy, he would ask sometimes directly and sometimes through me whether or not Mr. West felt that the contract was satisfactory and measured up.

Q Mr. West was of the Chadbourne firm—Mr. Harry West?

A Yes, sir.

Q And he was counsel for TWA?

A I would say so. He worked very closely with me and Hughes in the development of the Hughes contracts.

Q Before we leave that, what is meant there by the statement "measures up well, satisfactorily and normally [13768] to other contracts"? What other contracts does that refer to?

A As I recall it, Mr. Hughes was generally interested in knowing, for example, were the warranty provisions as good as we had obtained elsewhere—Lockheed, Boeing, and whatnot—or was there something unusual about them, and in other respects. I take it this is simply an expression from Mr. West that looking at the contract with an overall eye, that he felt on balance that it did.

Q What was Mr. West looking at? Was he looking at the proposed contract between the Hughes Tool Company and Convair? Is that what he was looking at and commenting on?

A I don't know if he was looking at anything, but I am sure he was intimately familiar with the contract as it had been developed up to that time.

Q I am trying to identify for the record, Mr. Rummel, when you say next to Mr. West "The contract is satisfactory to me"—what contracts was Mr. West referring to?

A Undoubtedly the contract that was proposed to run between Hughes Tool and Convair for the 880s.

Q And it was that contract which he was referring to when he said "Measures up well, satisfactorily and normally to other contracts"?

[13769] A I would sure so take it.

Q Those are your notes?

A I know they are my notes, Mr. Davis, and they were made a long time ago, but I believe that is the case.

Q The reference to JAC—that refers to Mr. Collings, does it not?

A Yes.

Q What does it mean there, next to Mr. Collings—"Hang the deal up on 'outgrowth of design' language"?

A As I recall it, this reflected a very strong feeling on Mr. Collings' part that the price had to come down in the airplane to be of real value to TWA. As I recall it, he felt very strongly on this. He wanted to be sure that as far as

a rebate proviso was concerned, that it encompassed any airplane that was derived from the 880 design.

I also recall that we all were directly concerned and felt that this language should be in the contract. What this indicates is that apparently I had received word from Collings that in his view this was sufficiently important if we didn't get it, that he didn't want the deal.

Q So Mr. Collings was also following the developments of this contract—the contract provisions?

A Not in detail at all, Mr. Davis. We had reviewed [13770] the salient points, attempted to answer what questions arose during the meeting referred to earlier. Collings was my boss, and certainly there were exchanges between us in various areas, but he did not make it a practice of following these things in detail.

Q And this note in effect refers to the views or instructions that Mr. Collings was giving you, or your understanding as to Mr. Collings' position?

A I don't remember exactly how it developed. In other words, I don't remember at the moment whether I put this here because I recall that at the time that he recited the results of the Kansas City meeting, that he felt very strongly. We hadn't yet obtained this, and I wanted to possibly recall to myself that he had said that—I am speculating now—sales effort to Convair to get this done, or maybe in talking to Hughes about these items. This particular piece of paper may have been and probably did precede a call to Hughes. I think it fell between calls, but I am not sure just at the moment. I don't recall exactly how this got on the paper, or whether it was another remark that Collings made to me when I ran into him, or on some other occasion, or if I simply was remembering back.

Q Let us turn the page to the next page of your [13771] notes. This is also in your handwriting, is it not?

A Yes.

Q Can you first tell us what those notes purport to reflect?

A It refers to some items that we have been talking about—modification of paragraph 7 to exclude fundamentally dissimilar and substitute "outgrow of design"—otherwise o.k. It is followed by "CAA insurance twenty to twenty-five thousand dollars, but would not hang contract up on this part alone."

Q Also look at the first paragraph on the page, which to be sure has a line striking through the words "Does counter-offer go to thirty at three million dollars each, discard rebate."

A That is what it appears to say.

Q Then there is a line through it.

A Yes.

Q What does that mean?

A I don't know.

Q Can you tell us the circumstances which brought about these notes?

A I don't recall that at all, Mr. Davis. It certainly suggests that either we were going to ask Convair to make such an offer—I don't recall having done it—or [13772] it suggests they might have talked about making such an offer, and I don't recall having received it. I just don't know.

Q Let us turn the page then to the next notes. Those are also in your handwriting, are they, except for what appears in the upper right-hand corner, reading "Convair notes" with your initials.

A Yes, sir, it is.

Q Can you first identify or describe what those notes purport to be about?

A Well, it's headed "Replacement of paragraphs numbers 6 and 7." I assume these are paragraphs in the rebate letter. I didn't say so. I would think so. Then it goes on:

"No. 6. The airplane described by Exhibit A of the purchase agreement or any outgrowth or derivative of that airplane are equally included for all price adjustment purposes contemplated by this letter agreement and are included in these"—

Q Which is corrected to "the".

A "Scope of the phrases quote 'Model 880 commercial sales' and 'Model 880 commercial program.'

"Subject to the following sentence"—which I really don't know, but I presume that to be the sentence [13773] that follows in paragraph 6.

I don't have a clear recollection on this either. This may well have been suggested language from possibly our attorneys, that we were going to try to negotiate with Convair. Something tells me that, but I don't have a clear recollection.

Q Is the next page also part of the same notes, or does the next page relate to something different?

A What we have talked about so far certainly isn't all the same note, but the next page certainly appears to be something different.

Q Mr. Cook was also involved in these negotiations with Convair?

A To some extent, yes.

Q He was representing the Hughes Tool Company, was he, in those discussions?

A Or Hughes personally. He didn't participate in all the discussions by any means, but he was in and out, and participated to some extent in review of papers. I don't remember Ray negotiating with Convair directly as such. I wouldn't want to say he didn't, but I don't recall seeing him there.

Q Now turning the page, the next sheet is also in your handwriting?

[13774] A Yes.

Q I notice in the upper left-hand corner the name Alan Abels.

A Alan Abels was in the Convair Sales Department.

Q And this "Academy 2-8082."

A It looks like a phone number.

Q Of Convair?

A I haven't the slightest idea, but maybe of Abels'.

Q What are these notes? What do they reflect?

A I don't know what the Tuscany Hotel was, or "tomorrow night."

Then there is 9:30 something trip—Friday. This may have been the Hughes office telling me how to get ahold of Ray Cook. I am not sure, but it wouldn't have been unusual when I had instructions from Hughes to tell Ray something, or discuss something with Cook, to find him through calling the Hughes office, and this may have been, but I can't say. It may have been the Hughes office telling me how to trail him.

The paragraph at the end which reads "Ray Cook—not willing to go ahead with board meeting to authorize signature until Hughes personally tells him so" is exactly what I testified to earlier, that when Hughes said for me to, or asked that I call Cook and tell him [13775] to go ahead, now that Hughes was satisfied with the deal, and made the decision to do that, when I did this, Ray indicated—I have already testified to this. This is the same thing.

Q In other words, you were trying to get ahold of Mr. Cook for the purpose of having the board of the Hughes Tool Company authorize the contract with Convair relating to those 880s?

A Yes, just as I testified earlier, Mr. Davis. I think that is in the record.

* * *

[Testimony — October 4, 1962]

[13850]

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Q Can we go back to the next effort by TWA to add to its air fleet?

[13851] A The next program finally resulted in the purchase of a fleet of 749As as I recall it. The 749A was competitive with the DC-6B. At least, both were competing for Hughes' and TWA's business.

The discussions surrounding this acquisition involve Hughes personally, but also a great many people in TWA; Mr. Damon was involved, Mr. Leslie, Mr. Cocke, Mr. Collings, myself, and others.

There were numbers of conversations by phone with Mr. Hughes wherein performance figures were discussed on the airplanes, the direct operating costs were discussed, and so on, and I believe that it was during this negotiation that the meeting at Douglas occurred that I referred to earlier.

As I recall it, at one point we ran a study showing the effect of—the economic effect of staying with a basic type that we already had, the Constellation, as compared to going to a new fleet.

Mr. Leslie participated in this, along with one or two of his people, along with Mr. Rourke and myself.

This information was done—this study was made at the specific request of Mr. Hughes, as I recall it, and the results given to him as well as to Mr. Collings and Mr. Damon.

[13852] I must say that I could be confusing this particular sequence with the 1049G negotiation, but I think it occurred at this time. I am not positive.

As I recall it, I favored the DC-6B, I believe that Mr. Collings favored the DC-6B, as I recall it, Mr. Hughes favored the DC-6B, although I must say that it wasn't always easy to know what Mr. Hughes favored and he didn't favor.

I couldn't always tell whether he was negotiating with me or what his position really was. Not that he had any purpose in negotiating with me, but sometimes he would seek out additional facts and take a position maybe to do this. I just didn't know. But I had that impression.

Mr. Damon was opposed to the DC-6B, or I had the impression he was opposed to dealing with Douglas at this time.

The result, as I recall it, of this state of affairs was that some additional studies were made, additional time went by, and finally Hughes agreed to go the Lockheed rather than Douglas.

Now, I might say that during this time things were somewhat in a state of limbo, so to speak. Negotiations continued with both parties, and both airplanes seemed to improve significantly, at least on paper, during this [13853] period.

You couldn't always tell whether the improvement represented a change of design or a change of mind, but in any event, what they were willing to contract for became better and better.

There wasn't any doubt—well, let's say that most of the cost figures projected a much lower seat mile cost for the Constellation—I am sorry—for the DC-6B than for the Constellation, and if I recall correctly, a slightly lower plane mile cost. I am not sure of that.

Part of the problem was trying to decide what value the excellent reputation of the Constellation would be in the future against an airplane like the DC-6B, because at that time I believe much of the reputation of the Constellation still stemmed from the early record flights that Mr. Hughes and Mr. Frye conducted.

At the same time, one of the other considerations, as I recall it, was whether—no, I am sorry. That was at an earlier time. I was going to refer to the Connie grounding, but it wouldn't have been applicable here.

In the end, TWA signed up for the airplanes after Mr. Hughes concurrence that it should do this.

Q Signed up with Lockheed?

A Yes. I don't recall the numbers that were involved.

[13854] Q Twenty-five approxmiately correct?

A That may be the number. I think it probably is.

The Special Master: We will take a short recess.

(Whereupon, a short recess was taken.)

By Mr. Davis:

Q Are you finished describing the circumstances or manner in which TWA procured the 749A?

A That's all I recall, that comes to mind, Mr. Davis.

Q You referred to a study being made at the request of Mr. Hughes to determine the advantage or advantages that might exist by adding additional aircraft of the same type to an existing fleet.

A Yes, sir.

Q What was the result of that study?

A Well, as I said, I am not absolutely sure it applied to 749As. It may have applied to the 1049Gs. But I believe, I am quite sure, it applied to the 749As.

But the result was that it showed that over a period of time, considering the inventory on hand and the interchangeability of parts, and that sort of thing, that the Connie would—well, I am not certain.

I think that it showed that the Connie offered some advantages over an extended period that would offset the difference in cost. But I am not really positive. I [13855] think that's the way it was.

Q The thing that I am puzzled about, the nature of your answer, is your lack of reference to the provisioning costs that would be involved by the introduction of a fleet of a new type of aircraft.

Let me ask you this: Did they have the same kind of engines, the DC-6Bs to the Lockheeds? Can you at least identify the factors that weighed pro and con?

A Well, this is exactly what I have been talking about.

Q It is not clear to me. I remember your testifying that you concluded that the DC-6B might have a lower seat mile cost and perhaps a lower plane mile cost. I haven't heard you tell me what your study reflected with respect to the desirability of additional Lockheeds.

A Mr. Hughes' requests, as I recall it, was to price out the program costs, that is, the added costs, the higher cost associated with the Douglas procurement against the added productivities of that airplane compared to the costs that could be saved if we bought additional Constellations because of greater standardization of provisioning, including spare engines.

This is what the study was about. In order to have it meaningful, I think he requested that it be done over an extended period. I don't remember if it was five [13856] years, or what, but it was over a period of time.

Q What was the result of that study?

A Well, that is what I am a little vague on. I think it resulted in a preference for—on that basis alone—for Constellations. It was only one of the aspects that were taken into account in finally determining the preference that we would have.

Most of these studies were simply, as most studies are, a presentation of material on whioh a judgment could be based.

Q You referred to a number of people at TWA taking a part in that decision. You referred to Mr. Leslie, Mr. Collings, Mr. Damon, Mr. Cocke, I believe, but you have not described how they participated or what took place, what happened to your recommendations, what conclusions they reached or expressed, and how the question was determined.

A Well, I think Mr. Davis, what I said was that these

people participated in the program, and by that I meant that performance figures that my department produced were sent to all of them, we had various meetings discussing the pros and cons of one program versus the other.

I don't recall any specific decisions as such. I do recall preferences or what seemed to me to be [13857] preferences that were expressed as I indicated. I think we were all hoping to influence Mr. Hughes into the way that we felt the deal should go, but certainly there wasn't uniform opinion within TWA, at least, part of this time.

Q Do you know if the matter was referred to the board of directors?

I am trying to determine how the corporate decision was arrived at, if one was arrived at.

A I don't recall the matter either going or not going to the board of directors.

Q You referred to the fact that it was during those developments that this meeting at Douglas took place. Can you put that in context for me?

A Well, if seems to me that it was during this period of time that the meeting at Douglas took place. No, I don't think I can. I don't recall exactly when it occurred, in relation to what phase, frankly.

Q Can you describe or identify how Douglas and Lockheed improved the offer that they made to TWA as a result of whatever was going on?

A Well, as I recall it, it was during this negotiation that the DC-6B was born.

Q I don't understand what you mean by that.

A Well, the DC-6B was developed from a DC-6 in the [13858] course of technical negotiations with Douglas. That was a distinct improvement over the DC-6.

Numbers of changes in the position were made between —that is, by both Lockheed and Douglas, as I recall it, on performance claims, or what they were willing to guarantee, but I don't recall the specifics.

I have the impression that this was part of the results of this negotiation, where we were working with more than one manufacturer at that time.

As I recall it, Douglas claimed that their airplane was noticeably better than the Lockheed, and that therefore the Lockheed data, which showed their airplane to be better than Douglas, wasn't correct.

I think Douglas—Lockheed made a counterclaim, and part of what we were doing in my department was trying to go back to the fundamental arithmetic, the drag coefficients and other engineering factors, and compare the airplanes as nearly as we could equally, that is, on the same basis, without prejudice one way or the other.

This was part of the effort to be sure—more certain of what we would finally get, whichever way we went, and at the same time, we used this work to try to exact or obtain from the manufacturers better contractual provisions.

[13859] I don't recall whether the 749A grew out of this negotiation or not. I have the impression that the 749A, which was essentially the 749 with more tankage and greater range—

Q More what?

A Tankage, a greater fuel capacity than the 749, which would then permit more range. I think that it was proposed as such by Lockheed rather than coming out of the negotiation directly, as did the DC-6B. I am not sure of all the details now, Mr. Davis.

I suspect because it happened so long ago.

Q Let me tell you what is not clear to me, Mr. Rummel. I believe you earlier testified the 749 was something pieced out of the Lockheed bone yard, and then you referred to the 749A and the DC-6B being born out of these negotiations. What I am not following is whether the discussions that TWA personnel were having with Lockheed and Douglas in effect developed in 749A aircraft and this DC-6B aircraft, or whether Lockheed and Douglas were competitively

making an offering of an aircraft which they had developed. That is what I am not following in your testimony.

Do you follow what is bothering me?

A I think both things were going on.

Q Describe what was going on, then, as well as you [13860] can recall it, Mr. Rummel.

A Well, I think both Lockheed and TWA—I am sorry—Lockheed and Douglas had made offers to both TWA and Hughes—I know they were both in touch with Hughes—and during the course of discussions both airplanes were improved somewhat.

Q Was the 749A an aircraft that Lockheed was manufacturing and offering to other airlines including TWA?

A I can't be sure now whether that was the case or not then. They certainly did offer them sooner or later. As I recall it, the 749A was manufactured from scrap rather than from the bone pile.

The DC-6B was not being offered to others until after it was invented, of course. That was during our negotiation.

Q It was invented during your negotiations?

A It grew from the DC-6 during these negotiations, as I said.

Q When did Douglas offer the DC-6 to other airlines?

A The DC-6?

Q B.

A B?

Q Yes. After the decision of TWA to go Lockheed, or during the course of the negotiations, or when?

[13861] A I couldn't say whether they made this available to others while we were still negotiating or whether it followed that. I just wouldn't know.

Q Isn't it true that a number of airlines subsequently did procure DC-6Bs to supplement their existing fleet?

A They certainly did, and this was used more than once by Mr. Hughes to impress on me that we should not,

in the future, try to improve airplanes consequentially until we were quite sure we were going to finally buy them.

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[13870]

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Q Perhaps I ought to ask you now to give us some examples, details, instances, of Mr. Damon's activity or interest in decisions relating to the acquisition of aircraft by TWA.

* * *

A I recall one meeting in Mr. Damon's office in Kansas City, I think it was probably a series of meetings over a few days, in which he reviewed and discussed with myself, Mr. Collings, and I am sure there were one or two [13871] others there, and I am vague now, except I am sure it was more than the three of us, he discussed the pros and cons of the Constellation program versus the Douglas program.

One of the problems we had was coming to an agreement on the value of the speed of the two aircraft. We had predicted that the Douglas airplane would be somewhat faster than the Constellation, and I held the view that this could well be a significant factor with respect to passenger appeal.

Now, this had been discussed with Hughes, and whether it is this particular instance or not, I don't recall, but at one time this discussion on speed got to the point where I required that both Douglas and Lockheed send engineers to Kansas City to sit down and have each group agree on the other's speed claims by joint analysis.

This is not an easy situation particularly, but they did come to agreement, and both signed a piece of paper on this point.

Q By "both" you mean Lockheed—

A Douglas and Lockheed signed—let me say the representatives of Douglas and Lockheed signed a piece of

paper, the paper indicating what they both thought the Douglas airplane would do and what they both thought the Lockheed airplane would do, and they both were in agreement [13872] as to what they thought each type would do.

Q Was this in connection with this 749A program, or in connection with a later acquisition?

A Well, this is where I am just a little vague. I hope my vagueness can be understood. I know this occurred, but I am not certain in which instance it did. I think that it was on the 1049G deal, but I am not positive.

We might have done this more than once, incidentally, with Douglas. We certainly did it to a much more elaborate extent between Convair and Martin.

Q You mean having representatives of both manufacturers at the same meeting and arguing out of the merits of their respective aircraft for the benefit of TWA officers?

A Well, it was for Mr. Hughes' benefit too, Mr. Davis.

Q He was present too, was he?

A He wasn't present, except on the telephone. I mean, he was in touch during these whole processes, and in the case of Douglas—I am sorry—in the case of the Martin-Convair deal, after a number of efforts, we could not get agreement, and finally, amidst what we thought was great secrecy, Mr. Hughes arranged for—with my assistance—arranged for a flight test to be conducted out of his facility at Culver City, the flight test involving both the Convair [13873] 240 and a Martin 202.

So in that case it wound up not in early agreement through a meeting, but it did culminate in a document signed by both Martin and Convair representatives, but this document was the flight test results, and there they had arguments along the line of, well, one propeller appeared to be slightly malfunctioning.

Now, what did that really mean in terms of the resulting performance they got? One engine, as I recall it, was down

slightly on power, so of course they would have to correct for that.

But all I am saying is that there were reasons for interpreting and coming to agreement on the flight test results, but they finally did.

These documents were sent to me with a strict admonition by Hughes that they were to be locked up forever and never revealed.

As far as I know, they never were, until these files were searched.

Q Until when?

A The recent search of the files was made. I don't know if they were picked up or not. But they should have still been there. Excuse me.

I think I got away a little bit from your original [13874] question to answer your second question.

Q I was interested in your description of your recollection of meetings at which representatives of competing manufacturers would argue out the merits of their product, and I was trying to identify who attended those meetings for or on behalf of either TWA or the Tool Company, and you said something to the effect that it was also for the benefit of Mr. Hughes, but by telephone, and what I am trying to establish, to understand a little more clearly, is how these meetings came about, who arranged for them, who attended them, what happened.

A If I may, Mr. Davis, before answering that, perhaps I should say in the interest of clarity that during the flight tests at Culver City on the Martin and the Convair, Hughes was personally present part of the time.

I don't recall that he flew the airplanes himself, but he was present during these flight tests at least part of the time, because I saw him there and spoke to him.

At that same time we had discussions with both Martin and Convair, that is, Hughes and I and others, but primarily with Martin.

I recall discussing in a car with Hughes and the Martin representatives—I think Hughes was driving—whether or not Martin could or should or what they might [13875] be able to do to put pieces back together on its production line and make airplanes out of them in order to deliver airplanes quickly and then move on into a pressurized version.

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[13896]

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Q What I would like to understand is this: The Martins and the Convairs were a different type of aircraft from the four-engine Lockheeds or DC-6s, and I would like to understand what transpired at TWA or at the Hughes Tool Company with respect to a decision to investigate and make an effort to acquire the type of aircraft reflected by the Martins.

A Well, pretty much throughout this period, Mr. Davis, TWA believed it was short of equipment.

Q What period are you referring to now, from 1945 to 1950?

A All right.

Q No, I am asking you.

A Yes, that is what the question would indicate. The feeling went on after that. I wasn't intending to limit it to 1950, but I thought that was the period of time you were inquiring into essentially.

There had been numbers of TWA forecasts originating from various departments indicating the need for short-haul equipment. Some of these were years old, and I believe it was generally felt that the need for short-haul equipment, such as represented by the Martins and [13897] the Convair types, had been with us for some time.

The view generally held also was, as I recall it, that it was more important to use the limited dollars that were being made available to equip the airline with long-haul

equipment. At the time of Mr. Hughes' crash, going back now some years, negotiations were under way with Convair for the possible acquiistion of a fleet of 240s.

Q That was back when, approximately; 1945, 1946?

A I am trying to think. I am guessing now, but I think around 1945, or close to that time, maybe 1947.

After Mr. Hughes' crash negotiations were essentially suspended, as I understood it, because TWA didn't feel it could move forward without Mr. Hughes' direct concurrence in the program.

Now, the interest that came along later in the Martins and the Convairs was generated because it was felt, at least internally, that the DC-3s were becoming economically obsolescent in many markets. By that time a number of our competitors had already equipped themselves with short-haul modern twin-engine aircraft, both Martins and Convairs, and we were still operating DC-3s.

I don't remember exactly when Mr. Hughes entered the scene, but it was in the early part of the negotiations. They might have even been originated by him. I [13898] just don't remember at the moment.

In any event, there was a need for aircraft that needed to be filled.

I testified—I am trying not to repeat testimony in the interest of saving time. I will simply mention I did testify earlier as to the situation Martin found itself in at this time, and the situation Convair found itself in.

[13899] Active negotiations were undertaken with Mr. Hughes' fairly direct, in fact, quite direct at times, participation. I was negotiating at Convair in his behalf and in behalf of TWA. During numbers of meetings I was in telephone communication with Mr. Hughes, sometimes excusing myself from the meetings to take the calls, and then returning to continue in negotiations.

The Convair people primarily concerned at that time

were Howard Koontz, W. C. Rockefeller, Gordon Woolcott, and others.

I was endeavoring, with Mr. Hughes' knowledge, to have Convair develop a better airplane than they were then offering, that is, the Model 240.

Q What was the offering before that?

A They were offering the 240, and I was trying to have them develop a better airplane.

Q Excuse me for interrupting you, but perhaps at this point it would be helpful if you could describe what offerings were available in this short-haul equipment to replace or update the DC-3.

A Well, at this particular time, as I indicated earlier, the only one available in the sense that there was a manufacturer willing to build one was the Convair 240.

[13900] Q What was Douglas doing in that type of equipment; were they still manufacturing DC-3s, or—

A No. They were simply making pictures. They weren't doing anything.

Q Did you say "pictures"?

A I am sorry. They were simply investigating various design possibilities, or talking to the airlines about them, but they weren't producing any aircraft, nor had they come to a plan that would produce any specific models that would compete directly with these airplanes.

Q And Boeing was not developing or offering to the trade, so to speak, a short-haul—

A Well, Boeing did at one time. I was probably close—I think it was before this period of time. Shortly after the war—I believe I mentioned this before—Boeing offered a twin-engine high-wing airplane that they had mocked up in Wichita.

I don't remember the exact date of this. It was never built. In fact, after a large scale mock-up conference including—during which most of the airlines had repre-

sentives participating, Boeing came to the conclusion that it woudn't offer the airplane.

It did offer it up until it withdrew it following the mock-up conference.

[13901] Q You have referred on two or more occasions to a crash in 1945, and I am not quite clear what the connection of that crash in 1945 had to do with the development of a program at TWA for short-haul equipment.

A Well, it was brought to mind, Mr. Davis, because we were talking about Convair.

At that time I had the impression that negotiations were quite far along with Convair for the acquisition of a fleet of 240-type airplanes.

Q Negotiations between whom?

A Between TWA representatives and Convair, but with words, as I understood it, coming from Hughes to some of the TWA participants in the negotiations.

Q But you yourself were not participating in those early negotiations with Convair, is that correct?

A Yes, I was, but I don't remember talking directly with Mr. Hughes about it. I was working on specifications and technical aspects.

I say at the time of the crash the negotiations came to a grinding halt, or shortly thereafter.

Convair—reverting now to where I was—Convair agreed while Mr. Cohu was out of the country to build an airplane that complied fairly completely with the configuration we desired.

[13902] I might say up until that time Mr. Cohu had opposed building anything other than the 240 that was then in production. Mr. Cohu was then president.

During the negotiation Eastern Airlines became actively interested in the model that we had been working with Convair on, and Convair had made offerings to Eastern.

This turned out to be pointed toward a nearly simul-

taneously if not simultaneously transaction between Convair and TWA and Convair and Eastern to produce this new type 240.

I do not remember the model number that was assigned to that airplane. It was not the 340, as I recall it.

However, the 340 was at least 90 per cent of the airplane that we negotiated and then never bought.

The Convair negotiation became quite inactive suddenly, and at that point our interest in the Martin possibility became much more active. We had been working with Martin before then, but at that point our interest centered on Martin rather than Convair.

Maybe to put that in a little better perspective, as I recall it, it was before this time that the comparative flight tests had been run in Culver City, and it was before this time that Martin had come to the plan of offering leased 202s as well as purchased 404s.

[13903] Convair wrote, I believe, a letter to Mr. Collings, one to Captain Rickenbacker of Eastern, advising that it was withdrawing its offer. This was, I believe, shortly before the time that everyone seemed to be contemplating that a deal could be consummated.

Then, as I said, we went to work at Martin, and perfected a contract and a specification, and during this time there were contacts with Mr. Hughes on what Martin was offering, the delivery positions, and that sort of thing, with me.

I don't know the extent to which he may have been talking to others any more.

The Martin contract was contingent, among other things, on arranging financing, as the majority of contracts were, and it was signed in due course with that contingency remaining open.

At the same time, or shortly thereafter, I guess I should say, I was negotiating with Lockheed for something. I

think it was the original long-bodied Constellation, as I recall it. I suddenly found myself, along with Mr. West, and part of the time Mr. Leslie, working in secret with Convair at the Constance Hotel in Pasadena.

The instructions were from Hughes that this had to be then in complete secrecy. I recall the additional charge [13904] that I had to keep things moving at Lockheed, and handle the other negotiation as well, and I remember spending the mornings working at Lockheed, dashing over to the Constance Hotel during the lunch period, working there until 9:00 or 10:00 at night, driving back to the hotel, and then repeating it night and day, including weekends, for some two weeks or so.

We were in the somewhat unusual posture of negotiating with Convair for this advanced 240 after contracts had been signed with Martin for the 202As and the 404s. We found Convair uniquely and surprisingly agreeable as to specification matters.

During this time specifications were essentially completed, many points that prior to then had been held in abeyance or they hadn't agreed to we suddenly found they were agreeable to, and if I recall correctly, contracts were drawn to a conclusion. By that I mean the contract forms were completed, as I recall it.

I remember one day we were sitting in the hotel room waiting for the meeting to commence, as I recall it, chatting with some Convair people, and Mr. Cohu walked in and looked at his wrist watch, noted the time out loud twice, then turned to his people, and asked if they delivered the specifications and contracts, the Convair [13905] people said they had.

He, as I recall it, turned and walked from the room, shortly to be followed by the Convair people, and that ended the negotiation. I didn't know this was going to happen, but observed that it did, and, as I recall it, shortly

after that the TWA representatives, including Mr. Leslie and the rest of us, went our respective ways.

I wasn't sure what more was expected of me with respect to what to do with the pieces of paper that had been handed to me and to the group.

In due course, the Martin contract became binding, as I recall it. I think on advice, I believe from Mr. Leslie, I am not sure that the financing had been completed, but I didn't handle that particular phase of advice to Martin or that part of it.

Some months later, I don't recall exactly when, I was on the West Coast at Mr. Ellinger's office in Burbank, I received a call from Mr. Hughes asking that I meet him at a certain gate at the terminal at a certain hour—I think it was 11 o'clock—I am not sure of the hour now—which I did.

He taxied up in a converted Douglas twin engine bomber. I joined him. I think there was a mechanic on board. We flew down to Palm Springs, landed, got in a [13906] car, and drove to one motel, where we came across some Convair people, and then drove to another motel, where we joined Mr. Odlum.

As I recall it, up until then I didn't know what this meeting was all about.

Q Mr. Odlum was then chairman of the board of Convair?

A Yes. The purpose of the meeting was for me to, along with some Convair people, as it turned out, was for me to account to Mr. Hughes and Mr. Odlum as to how it was and why it was that TWA purchased Martins rather than Convairs.

I explained the sequence of what transpired. I remember that W. C. Rockefeller of Convair did too. It seemed to be agreed between Mr. Hughes and Mr. Odlum that the turning point of the negotiation was when the letters were withdrawn by Mr. Cohu.

After the meeting I flew back with Mr. Hughes to Burbank, had dinner with him, and then he went his way and I went my way.

I think, Mr. Davis, that would be a nut shell treatment on the Martin-Convair situation.

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[13910]

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Q An agreement was entered into for some Martin 202s?

A Not that I recall. There were 202As, Mr. Davis, if that is what—

Q I am referring to what has been marked as Defendants' Exhibit 163.

A That would be 202A.

Q That should be 202As?

A Yes.

Q Referring to the acquisition of 12 aircraft?

A Yes. The 12 were initially leased and later purchased, I believe.

Q Beg your pardon?

A The 12 were initially leased—

Q Leased from whom?

A Martin.

(Continuing)—and later purchased.

[13911] Q This was an arrangement entered into directly with Martin, is that correct?

A This was a contract between Martin and TWA, and is part of the negotiation I just discussed.

Q Was it during that period you were also negotiating for some Martin 404s?

A Yes. The 202A and the 404 negotiation were simultaneous negotiations.

Q TWA acquired forty of those 404s?

A As I recall it, we acquired thirty-eight, Mr. Davis. I am not certain now whether Mr. Hughes took one or two, but I think he took two of those.

Q Do you know—

A TWA—the TWA contract was for, initially, forty airplanes and for 12, and two got split off along toward the latter part of the program. I remember we had to strip TWA paint off the airplanes and deliver them bare, as I recall it.

Q This contract for these forty 404s was an arrangement directly between TWA and Martin?

A As I recall it, this was a TWA-Martin contract.

Q It is your recollection that two of those forty were acquired by the Tool Company?

A Well, I think it was two. It certainly was at [13912] least one, but I think the record would show that two got delivered to Mr. Hughes.

Q Do you know what happened to those, to that one or two?

A Well, I am quite sure it was two.

Q Do you know what happened—

A Two or one was flown by TWA pilots, under extremely strict and stringent instructions from Mr. Hughes as to how and where and so forth, but I believe they were flown to some desert location, I don't recall exactly where, and parked.

I am really not sure of this, but I believe some years later they were sold to one of the feeder airlines. I am not positive now as to who got them, but that seems to be my recollection.

Q Do you know who if anyone at TWA would be familiar with that aspect of the transaction?

A Well, once the airplanes were delivered to Hughes, as I recall it, TWA had no further interest in them.

In other words, a simultaneous change order was worked out, as I recall it, with Martin, so that Hughes got the airplanes. I don't recall if they were delivered to TWA and then a half a second later delivered to Hughes, or just

how that was handled. But they became Hughes property, [13913] and I don't recall being involved in any way with the subsequent disposal of the Hughes airplanes.

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[13917]

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Q Will you tell us when TWA next gave any consideration to the acquisition of additional commercial aircraft for its fleet?

A The next active negotiation that I recall was on the long-bodied Constellation. This idea had been kicked around Lockheed for at least two years prior to the time it materialized. The long-bodied Constellation [13918] was a more or less standard Constellation with an 18-foot length extension in the fuselage, and with somewhat higher power—powered engines, as I recall it.

I was asked to look the airplane over, and finally to carry on a specification negotiation. As I recall it, this was one of those cases where the request came from Hughes, but with the knowledge and consent of TWA's management.

Q Who at TWA?

A At this time, Mr. Collings and Mr. Damon.

Negotiation—the negotiation took place in Burbank, during which I was in communication with Mr. Hughes by telephone numbers of times, discussing the airplane design, as well as Lockheed's position on some of the negotiating aspects, such as prices for changes, airplane price, delivery, and the like.

I am not certain at the moment just how long the negotiations lasted, but I believe they spanned a number of months, during which time Lockheed remained substantially adamant with respect to our requests, as I recall it, at least. Mr. Hughes finally suggested I return to Kansas City because Lockheed were being completely unreasonable on airplane prices, and I think on delivery, but I am not too sure

now just what the delivery situation [13919] was, but that seems to come to mind in relation to the 1049 deal.

TWA or Hughes did not buy 1049s. While I was working with Mr. Hughes I reported periodically the progress or lack of it to Mr. Collings in TWA. TWA at that time did desire additional long-range aircraft.

Subsequent to this time Eastern Airlines ordered 1049As at a price, as I recall it, substantially less than had been negotiated by and for Hughes, and I believe Eastern bought a substantial number of airplanes, but I don't recall exactly how many.

After this occurred Mr. Hughes renewed his interest in the 1049 series, and negotiations were again undertaken, but this time the negotiations were of a somewhat different character, although what I am speaking of here is a matter of degree. In this instance, as I recall it, Mr. Hughes personally conducted negotiations with Lockheed to a considerably great extent than in the case of the 1049, although I was called upon to work with Lockheed in somewhat limited areas.

Incidentally, Exhibit 163 should refer to 1049As rather than plain 1049s.

Q You are referring to the acquisition by TWA of [13920] ten 1049As by contract dated December 5, 1950?

A Yes, LD-75. That should be 1049A.

Q This 1049A is this long-bodied Constellation to which you have been referring?

A Yes.

Q That was acquired by TWA directly from Lockheed?

A The contract I believe was a TWA contract with Lockheed.

I started to say, at one point Mr. Hughes negotiated a list of changes that would be made to the Eastern Airlines configuration. This list was substantially less than TWA desired. It was all that Lockheed apparently would agree to with Mr. Hughes. It was some ten or twelve items.

I was asked, as I recall it, to negotiate with Lockheed within the framework of that agreement between Hughes and Lockheed on the configuration. I discussed this a number of times, hoping to find a way to expand the negotiation, but was unable to substantially make any—was unable to make any substantial changes.

Shortly before the contract was signed, and I am just a little bit vague on who signed or where it was signed, but I recall being asked one evening to review the specifications and the contract in depth by telephone [13921] with Mr. Collings, Mr. Damon, I am quite sure Mr. Leslie, and report back the following morning.

Q Report back to them the following morning?

A No, report back to Mr. Hughes the following morning whether or not all these things were agreeable with them. I might say the specification was possibly 150 pages thick, and the contract some 50 or so.

I tried to locate these men, and was unable to reach them by telephone, and reported this to Mr. Hughes. It could well be that I was asked to clear it with Mr. Pierson too, but I am not sure of the exact list.

I have the impression the contract was signed immediately after this effort, but I don't recall, as I said, who signed it, whether it was initially signed by Toolco or TWA. I am not certain. Within a day or so Mr. Damon and Mr. Collings showed up on the Coast while I was still there, and met with me to find out what had transpired, and I told them as well as I could, provided them with an estimate of how much money I thought it would take to put the airplanes in the shape that I had understood TWA wanted.

I felt it necessary to do this because it was my understanding that I would have jurisdiction over the airplanes, as I had before, while they were being built, and I was hoping to be able to make some changes in [13922] configuration while they were being built, and I felt that I should advise them right off what the budget might be.

I had the impression that the contract was then signed, and I was simply explaining something that had already been accomplished.

This is my best recollection, but I am drawing a blank on the signing, so I would have to assume at this point that something went on with respect to signing, and that maybe I didn't know about it, or else I simply have forgotten.

All ten airplanes were eventually delivered to TWA, and numbers of mods were made during the course of construction, and I believe some were made following the delivery.

A I understand it, the initial negotiation between Hughes and Lockheed on configuration had to do with compromises between configuration and delivery schedules, but I am not clear exactly how that worked at this time.

Q Was that 1049A basically the same as the 749A, except it was longer, bigger, or was it a basically different type of aircraft?

A It was a beefed up 749A. In other words, the structure was designed for a higher gross weight than the [13923] 749A, as I recall it. It had considerable more payload capacity, and I believe had ample range designed in for transcontinental non-stop service.

The 749A was good for both domestic and international service. I believe the airplane had somewhat more power in it, probably bigger superchargers. Let me just say there were some detail system changes throughout the airplane necessitated by the bigger fuselage.

Q Apart from the negotiations that went on with Lockheed relating to configuration and specifications, who negotiated the other business terms, such as financing or price or other things which are normally negotiated?

A Well, I think it was during this negotiation, Mr. Davis, although it might have been the 749As, but I recall one discussion with Hughes. I was on the phone in Ellinger's old Burbank office. I raised the question of financing.

I said "Well, I am not certain financing is arranged, Mr. Hughes." I think this was along toward the end of the negotiation. "I am not sure that TWA is in a position to go ahead."

The reply was that I was to never mind about financing, or anything along that line, that he was going to take care of all those considerations. He didn't want the subject to come up again, and as nearly [13924] as I can recall, I don't remember talking to him about financing since on anything.

Q I understand that, but I was wondering if you knew who, if anyone, at TWA participated or negotiated with Lockheed on the subject matter of financing, price or—

A No, I don't. I don't say that someone didn't, but I don't recall anyone from TWA negotiating financial aspects with Lockheed on this particular deal.

Q Do you recall what studies or evaluations were made relating to the number of aircraft to be acquired?

A No. As I recall that aspect, ten was all Lockheed could sandwich in.

Q Sandwich into their schedule to deliver to Eastern?

A Yes. Lockheed was prevailed upon, as I understand it, by Hughes to make airplanes available at a time when it really didn't want to, and they somehow were able to alter their production plan to break ten out of it, as I understand it.

Q This is something which took place after Eastern had successfully negotiated an arrangement with Lockheed for a substantial number of these 1049As?

A It was after, as I recall it, after Eastern had ordered a group of 1049s. I don't recall if they [13925] were As or not. There were subsequent Eastern renegotiations with Lockheed in the same order. So I don't know how successful they considered it. But in any event, they did order airplanes.

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[Testimony — October 5, 1962]

* * *

[13988] Q Let me make it quite clear. Will you now proceed with a description of the circumstances involving the procurement of 1649As?

A Yes. Let me say first the 1649A grew out of the — a 1549A, which grew out of a 1449A. The type that was initially ordered by Hughes Tool was the 1449A. Twenty-five were ordered.

Q Twenty-five were originally ordered by Hughes Tool?

A Yes.

Q All right.

A I think it would be helpful to what I am going to say to briefly describe the differences between these airplanes.

Q I was hoping you would.

A The 1449A was a Lockheed Constellation with a fuselage the same size as the 1049G, but with the star wing installed. The star wing was a much higher aspect ratio. That is, it had more span in relation to the chord than the earlier Constellation series, and was quite similar to the wing that was being installed on the C-130. This airplane had large Pratt & Whitney turbo-propeller engines. By this time Lockheed had modified two Connies, and installed this type engines [13989] on them, and had delivered them or was about to deliver them to the Navy for experimental purposes.

It was forecasted to be considerably faster than the 1049G, and was forecasted to have sufficient range for transcontinental non-stop operation.

The 1549 was a number assigned to a series of airplanes that were under consideration, as I recall it, and one of them had Allison rather than Pratt & Whitney turboprop

engines, one of them had jet engines mounted at the wing tip.

This particular phase of it was extremely secret. As I recall it, Mr. Hughes applied the code word Stringbean to this particular consideration, that is, the installation of jet engines on the wing tips of this series.

The 1649A was essentially the 1449 equipped with piston engines manufactured by Wright.

Q Rather than Pratt & Whitney, you mean?

A No. The same as had been installed in the 1049G, except that the engine itself was somewhat more advanced. In other words, the same engine type as had been put in the 1049G, but a more advanced model. For example, it had a different gear ratio that permitted a slower turning propeller than the 1049G.

[13990] Q The 1049G was equipped with Wright engines?

A Yes, sir.

Q What was your reference to the Pratt & Whitney turboprop engine? That was on the original concept of the 1449A?

A Yes.

Q I see.

A The 1649A started its contractual life with provisions in a certain number of airplanes for mounting engines on the wing tip, that is, jets. These provisions were dropped during the course of the construction of the airplanes.

The negotiation was conducted to a very great extent by Mr. Hughes and between Mr. Hughes and Mr. Schwartz. Mr. Leonard Schwartz would occasionally advise me what was going on, and what the status of the negotiation was.

I also had numbers of discussions with Mr. Hughes from time to time on this project.

Q Mr. Schwartz at that time was with Lockheed?

A Yes, sir. As I recall it, Mr. Hughes had promoted

the concept of the airplane with Lockheed. I don't recall precisely at the moment what triggered the negotiations, but negotiations were undertaken with [13991] Lockheed that involved myself, on occasion Mr. Damon, Mr. Collings, Russel Rourke and others.

It became apparent quite early in the game that the 1449A was not an economical airplane. It also became apparent that at least in my opinion, and I believe the opinion of others working with me in the technical end, that it was not a good risk from an engineering point of view.

To explain that I perhaps should say that the airplane either needed a much smaller engine or a much bigger fuselage, with the rest of it to go with it, such as a proportionately shaped and sized wing, and so on.

In fact, at one point a meeting was held at the Hollywood Roosevelt involving Mr. Collings, I believe Mr. Fellows, Mr. Rourke, myself, Mr. Damon, possibly one or two others, with Lockheed, at which time Lockheed finally presented, after several months of urging, a redesigned 1449A.

This airplane had an entirely new, larger fuselage, the wing, the star wing, was a new wing, and it essentially was a new airplane. It looked pretty good. However, Lockheed was unwilling to produce it because it would not meet the delivery requirements that it understood that TWA wanted and needed, and that Mr. Hughes [13992] had discussed with them.

Actually, the airplane would have required, as I recall it, at least another year to produce, and I believe that the TWA group reluctantly agreed that their point on delivery was valid.

I and my people had had numbers of arguments with Lockheed concerning the economic or operating cost aspects of the airplane, and we had had numbers of arguments concerning the range aspects of the airplane.

Lockheed engineers and sales people took a position

which we honestly felt was giving the airplane and the engine way too much credit. We were taking a position of at least trying, to the best of our ability, to predict what we could reasonably actually expect the airplane to do.

These differences were not resolved during the course of the negotiation, and I would think that both sides were quite sincere in their views. These views just differed. Of course, Lockheed was trying to sell an airplane.

I believe that I testified earlier as to a meeting Mr. Hughes chairmanned, attended by both TWA and Lockheed representatives in an effort to resolve differences between the TWA and the Lockheed views on [13993] performance and operating cost characteristics, and I believe I testified that the meeting did not resolve those differences, but I believe clarified the issues for Mr. Hughes.

Q I believe you testified about meetings where representatives of competing aircraft manufacturers were confronted, each signing a piece of paper as to their relative claims. I don't recall your having testified in any detail with respect to the meeting you are now referring to.

A Well, I don't recall testifying in great detail. I recall having mentioned this.

Q I didn't mean to interrupt you. I am interested in how that meeting came about, and—

A It was called by Mr. Hughes.

Q This was on the subject of the performance characteristics of the 1449A?

A That's my recollection, yes.

Q Please proceed.

A Before all this got under way, that is, before the negotiation became advanced, we had analyzed the DC-7C, and other airplanes that were being considered, I believe including turboprop possibilities of the Constellation, and had recommended that TWA procure the [13994] DC-7C. The DC-7C was a DC-7 with more wing and more fuel

capacity. It may have had a fuselage one seat row longer than the DC-7, but I don't recall that at the moment. This recommendation had been concurred in by Mr. Damon and Mr. Collings, and I am quite sure had been passed along to Mr. Hughes.

It may have been this recommendation that sparked the negotiation at Lockheed, but I don't recall specifically that that in fact was the case.

But in any event, the Lockheed negotiation started about this time, or shortly thereafter, for the 1449A.

I recall on numbers of occasions advising Mr. Hughes that the 1449A, in my opinion, was uneconomical, and that it was a poor risk, that I didn't feel we had reasonable technical assurance that either the engine or the airplane, but my main worry was the engine, could be reasonably expected to produce the fuel consumption characteristics that Pratt & Whitney was claiming for it and that Lockheed was relying on.

At one point we looked at wing tip engines on the 1449A and found that with normal operating practices, as I recall it now, the airplane could only fly non-stop about halfway across the continent. That was with the tip engines on. [13995] I simply point that out to avoid confusion. We also, as I recall it now, looked at operating these tip engines part way across to get a speed boost and cutting them off and letting them fly along for the ride. We looked at all sorts of possibilities.

Mr. Hughes seemed determined to move forward with the 1449A. At one point I recall risking his anger by raising the question as to whether or not he wanted a vehicle with which TWA could make money. I realized there could be other considerations.

He indicated that he certainly did want airplanes that TWA could make money with, and that he recognized there was a difference of opinion between TWA and Lockheed on

the merits of the airplane. I tried to dissuade him from moving forward with the 1449 because I did not believe it to be a worthwhile venture for TWA, and certainly not in comparison with the DC-7C.

[13996] There was an additional meeting, as I recall, at Lockheed attended by Mr. Damon, I think Mr. Collings, myself and Mr. Rourke. As I recall it, Bob Gross, Kelly Johnson, possibly Courtlandt Cross, Leonard Schwartz, and I think a few others, were there for Lockheed.

This was arranged before by Mr. Hughes in order for Lockheed to convince TWA that the airplane was a good airplane and one that they should be fully interested in, and possibly additionally to resolve some of the technical positions that we were apart on, but I don't remember that particular aspect being front and center at that time.

The 1649—I am sorry—the 1449A contract was signed by Hughes Tool—well, let me say, I didn't see anybody sign it, but it was wrapped up for signing. I guess I am not sure whether it was signed in California or Houston, but at least the signatures authorized on December 23, 1954, I think. I think it was December 23, 1954.

The meeting on December 23rd took place in the evening at the Beverly Hills Hotel. I recall that Raymond Cook, Mickey West, myself, I believe Harry L. West, were present, and I believe—well, I am certain the principal Lockheed representative was Leonard Schwartz, and I am sure there were a few others there.

[13997] I believe one was Kirk Yost, but I am not absolutely positive. We were in a largish green colored room downstairs.

It was some sort of a dining room. I forget what it was called.

Lockheed had the long paneled room on the other side of the building downstairs, and Schwartz was running from that meeting back and forth, conferring on various points

with his people and then reporting them to Mr. Cook, who had the lead, as I observed it, in closing the deal.

I continued to try to prevail with respect to my views on the worthwhile nature of the airplane throughout the negotiation, and continued to do so that evening. As I recall it, at just about every opportunity and every free moment I tried to convince Mr. Cook, to some extent Mickey West—I say "some extent" because he was fairly new; I think that's the only time I saw him in relation to this particular deal—and I recall that at one point toward the end of the evening Mr. Cook was talking to Mr. Hughes, presumably either about the deal or the effect of the deal on the Hughes Tool cash position, or other considerations with which I was not directly involved or concerned, but Ray, knowing my long-standing feeling, [13998] urged Mr. Hughes talk to me, he had asked that I stand by, and after this was said several times through the course of the conversation, at the close of the conversation Mr. Hughes did talk to me, and I remember advising that I felt it was a poor bet—I don't recall my exact words—that it was an airplane which I felt was exceedingly risky and one which, from all that I could see, even at that stage, would simply be an uneconomical undertaking.

As I recall it, Mr. Hughes indicated that he felt that Lockheed would do a pretty good job, that he felt that Lockheed would do a better job than the papers indicated, and something to the effect that if they did not they would certainly lose a long-standing customer, or something to this effect.

I think he mentioned that he had an agreement with Lockheed—I don't recall what it was—either on the weight of the airplane, or some such thing, that he felt would improve the outlook.

I assume this was verbal. At least, I never saw it later, and it didn't come up again.

I did my best at that time to make it clear, at least as far as I was concerned, as a professional opinion, if you like, to Mr. Hughes that this was not the way to go, either for TWA or himself. However, the papers were [13999] signed.

A good many other things went on during the period of the negotiation, and there were numbers of conversations with Mr. Hughes. I remember at one time being instrumental in having a couple of our pilots fly in one of the Navy airplanes equipped with these engines and to discuss with the Navy pilots who had flown it what their reactions were to the airplane.

When I say "the airplane," it was not the 1449, it was a standard size Connie with a standard wing with the same kind of engines mounted that I referred to earlier. Their reaction was exceedingly negative because of the—primarily, as I recall it, the vibration characteristics.

Several months after the deal had been closed—I am not sure of this now, but I think it was about several months, or thereabouts—I received a call from Kelly Johnson advising that while he hated to have to tell me this, Pratt & Whitney had withdrawn the engine from production because recent tests they had run indicated that it was hopelessly out of line with respect to fuel consumption and that they saw no way to improve the engine because of basic problems they had discovered, and that even half way improvements couldn't be made in time for the airplane program, and even if they were done, it still wouldn't be [14000] good enough, or words to this effect.

This, of course, created quite a dilemma for Lockheed, and it was following this word that the 1549A exercise was undertaken.

This was done by our working with Lockheed and Lockheed working with us—I mean now the TWA people—and with myself being in touch with Mr. Hughes by phone from

time to time, and I am sure that during the same period Lockheed was in touch with Mr. Hughes, presenting preview drawings and discussing pros and cons and various proposals.

We also gave consideration to—in some detail—to the Allison engine. By that I mean we talked to Allison and Allison talked to us, we were having conversations with propeller manufacturers, in an effort to see if the airplane couldn't be made a worthwhile airplane. I might say the Allison engine was much better sized.

In fact, it was just a little small, but it was much better sized than the big Pratt & Whitney engine. I am not saying that this was the first time that we looked at an Allison powered Connie, but we did look at it most seriously at this time because of the Tool Company commitment.

We finally moved from the 1549 to the 1649A, which had the [W]right engines. I believe this was primarily a [14001] Lockheed decision. At least, I don't recall personally being a decisive factor with respect to the airplane becoming a piston engined airplane, although it may well have been a Lockheed-Hughes decision to go that route.

While I was just becoming involved in the early Model 18 negotiations with Convair, I received a call from Mr. Hughes advising that he had been in touch with Lockheed, that he thought Lockheed would be able to save the program, they had worked out a way to install Wright engines, and that he had been in touch with Schwartz on deliveries and other factors, and that Schwartz would call me, that he wanted me to divide myself in two, that is, continue the Model 18 negotiations and coordinate and handle or let's say be responsible for, to the extent that anyone was, other than Hughes, for the 1649A negotiations.

This comes to mind quite clearly. I recall standing on a balcony in the weather on the end of a telephone talking to Schwartz for an appreciable period of time late one night

simply because the phones hadn't been connected in the apartment.

He, Schwartz, explained the delivery expectancy. He seemed quite enthusiastic about his ability to make [14002] the program go, that is, sell others the same kind of airplanes, as I recall it, and he explained the nature of his discussions, to some extent, with Hughes. That is, what they had already agreed to. This was not too uncommon I might say, to receive word of this type from Lockheed, although I think I should add, in fairness to Mr. Hughes, that Mr. Hughes also gave instructions and kept us advised, at least, to an appreciable extent.

I reviewed this with Mr. Harry West, as I recall it, and arranged for contract negotiations to again be undertaken, that is, revising the 1449A contract to bring it up to date and encompass the 1649A.

There were technical meetings, some in San Diego, because some of my people were there on the Model 18, and we split, as much as we could, the responsibility on the 1649A and the Model 18.

The 1649A contract, which, while it wasn't quite as bad as the 1449A with respect to economics, was not a good airplane as we projected it in relation to the Douglas series, the contract for the 1649A was signed.

This was an elaborate change order, as I recall it, to the 1449A contract, and it was signed, as I recall it, during March. During March, that would be 1955.

Lockheed, during April, I think it was late April, [14003] sent a wire to the Hughes Tool Company—I received a copy of it—which advised that they decided to cancel the 1649A contract, withdraw it from the market, and asked for Hughes' concurrence.

I thought for a while that maybe they would receive that concurrence. I supported the idea of cancelling. However, the word came back that the cancellation was not to

be accepted. This didn't come to me, as I recall it. This came from Mr. Hughes or someone in touch with Hughes to Mr. Cook, if memory serves properly, and Mr. Cook handled this in Houston, and then either he or Price or someone there told me this. I think it was Ray.

But in any event, the wire did come through then which advised Lockheed that the cancellation was unacceptable and to proceed with the program.

As I say, I can't be entirely sure of the date. I think that was in April, late April possibly.

Shortly after that, as I recall it, I was set up as a representative to sign change orders, and I believe TWA was authorized, in due course, to provision the airplane in behalf of the Hughes Tool Company, but to TWA's requirements.

That's all I recall at the moment of the negotiation and the things that took place leading up to the finaliza-
[14004] tion of the deal.

* * *

[14039]

* * *

Q Do you know of any situation where Mr. Hughes or the Hughes Tool Company dictated to TWA or its management as to the quantity of aircraft to be acquired of any particular type?

A Well, I certainly had the impression that it was strictly Hughes' decision to move forward with the 1649A.
[14040] I don't recall, unfortunately, perhaps, whether the twenty-five represented a financial limit that he saw or a TWA need that had been expressed to him by Damon or others or myself. I don't recall that.

The thirty Convairs, how that was arrived at, I have already testified to. I am not clear on exactly how it came to be eighteen 331s, but I believe that TWA did express to Mr. Hughes that it could use that number of 331s.

I think most of the time we were pushing for getting more airplanes than we were able to get rather than the opposite, as a generality.

Q Have you now fully answered my last question, Mr. Rummel?

A I think so.

Q You still have no recollection as to how the number twenty-five, relative to the 1649As, was determined?

A No.

* * *

[14075]

* * *

Q Referring to what has been marked as Defendants' Exhibit 166, Mr. Rummel, let me first ask you, who is Mr. Sawyer?

A May I read this?

Q Can you tell me who Mr. Sawyer is before you read the letter?

A No, I don't remember.

Q Read the letter then.

* * *

[14076]

* * *

Q The pending question to you is if you can identify Mr. Sawyer, Donald L. A. Sawyer.

A No, I do not remember Mr. Sawyer.

Q Can you tell us who prepared this letter and the circumstances involved or relating to this letter?

A I don't recall preparing the letter at all, Mr. [14077] Davis. I might say, in response to your comment a moment ago, the fact that RKR's initials are at the bottom left—

Q RWR?

A RKR.

(Continuing)—indicates that it was probably dictated or written by Mr. Rourke. The RWR simply indicates that it was sent through my office or a letter developed for my signature, and the GD would indicate the secretary that typed it.

* * *

[14078]

* * *

Q At that time, namely, in July 1955, was Mr. Rourke your assistant, or what was his position?

A I believe in 1955 Mr. Rourke was in charge of one of the major groups under me.

Q I am particularly interested in the paragraph or the portion of the paragraph which reads as follows, on the first page:

> "Acquisition of the 1649 by no means indicates that TWA has no interest in turboprop or turbojet airplanes."

Let me first ask you, that is a fair statement of the facts as they existed at that time in 1955?

A I think so, yes.

Q The next sentence reads "The 1649 Constellation has extremely good payload-range characteristics, particularly for international operation and will make possible nonstop operation between Paris and New York with a high degree of reliability."

Is that statement substantially correct?

A I think it is, and I think we thought so at the time.

Q The next sentence reads:

> "In this regard, an airplane was needed to compete [14079] with the long-range DC-7C and we believe the 1649 to be superior to the DC-7C in all

major respects of payload, range, speed and economy."

Does that sentence correctly set forth the facts as known at the time?

A I think it does with respect to payload and range. I don't think that it does with respect to speed and economy. I am giving you now what I am recalling my impression was then.

Q You think that the writer of this letter made an error in that regard?

A Well, let's say I don't recall subscribing to the idea that the 1649A was more economical or faster than the DC-7.

Q Let me ask you this: Did Mr. Rourke hold some views which differed from yours in some respects with respect to the 1649?

A Oh, I think we agreed on the major items, Mr. Davis. I was guided to a great extent by what Mr. Rourke was thinking, and I suspect that possibly some of my thinking might have rubbed off on him a time or two. But I think generally we agreed.

Q Look at the next sentence:

"Further, the 1649 is to be available sooner than [14080] any long-range turbine powered airplane can be placed in service."

Is that a correct statement of the facts as then known?

A Oh, I am sure it was. The exception might have been the Comet. I don't have Mr. Sawyer's letter, I don't know if he is talking about U. S. airplanes or what. It certainly would be a true statement with respect to airplanes produced in the United States.

Q Will you look at the next sentence, which reads:

Rummel Deposition.

> "You no doubt noticed in the press that TWA some time ago was actively engaged in discussions as to the possibility of installing a turboprop engine in the new wing Constellation."

That states an accurate fact, does it not, that in fact there appeared in the press the fact that TWA was actively engaged in discussions?

A I don't recall anything in the press on that item, Mr. Davis. I don't say it didn't occur. I just don't remember.

Q The last sentence of that paragraph, which reads:

> "It appeared, however, that a suitable engine having reasonable specific fuel consumption would not be available seasonably to satisfy our requirements [14081] for having an airplane in service to compete with the DC-7C."

Does that sentence fairly reflect the facts as then known?

A Well, I think it is a general way to put in a letter of this type what happened. The facts I already testified to, that is, that Pratt withdrew the engine because it wasn't good enough and couldn't be corrected in time to do the program any good.

Q Will you look at the next paragraph in that letter, Mr. Rummel, which reads:

> "I think you will find throughout the industry the opinion that the turboprop airplane has been delayed by the lack of the right engine with a reasonable specific fuel consumption to permit development of a long-range international overwater transport."

Does that sentence fairly reflect the opinion which existed throughout the industry at that time?

A Well, I think it reflects my opinion. I wouldn't want to say it reflected the opinion throughout the industry, because at that time both Wright and Pratt were trying to promote use of their engines, that is, turbine type engines.

[14082] Q Do you know whether or not Mr. Rourke felt that this was an opinion which existed throughout the industry?

A As nearly as I can tell, Mr. Davis, Mr. Rourke wrote this letter, I didn't.

Q I understand that. I am now asking you if you have any recollection as to whether or not those were in fact the views held by Mr. Rourke.

A I am quite sure they were.

Q Look at the next sentence:

> "Because of military influence, the major effort in this regard up until recently has been in the turbojet engine field."

Can you tell us whose major effort Mr. Rourke was referring to in that letter? Was that the major effort of TWA?

A. I am quite sure he is talking about the developmental effort that was being put forth by the engine manufacturers.

* * *

[Testimony — October 8, 1962]

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[14104]

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Q If you look at Defendants' Exhibit 163, I note that we have listed a contract presumably dated April 1958 for the acquisition from Lockheed of four additional 1649As. Do you recall that event?

A I recall some of that, yes.

Q Can you explain how that came about?

A Not entirely. I am glad to tell you what I do recall on it.

Q Yes?

A What I don't recall is exactly how the consideration of the four airplanes originated.

Q How the configuration originated?

A Consideration originated.

I recall receiving a telephone call from Mr. Hughes, during which he mentioned the four airplanes. These airplanes had been contracted for by Air Italia, I believe.

Well, I might go back even before that and say, I met, in my office, I and my people were there at Italia before they contracted for the airplanes and assisted them in the review of the specifications. I am not completely [14105] certain of this, but I believe this was done at the suggestion of Mr. Pierson's office.

Of course, we at that time pointed out the advantages to configuration that we had in an effort to try to get them to standardize with us. I might say these things do, sometimes, have advantages of a long-term nature, the more standardization we get possibly the more cheaper parts cost or exchange of inventory at points commonly served and so on.

In any event, this was done. At one time we also tried to sell Air France on our configuration, but that is a different story.

Well, during this call from Hughes, he discussed these four airplanes, and in the course of the conversation discussed with me what the best way was to make a deal with Air Italia and, specifically, who should undertake the negotiations.

As I recall it, he set forth certain criteria that he wanted met in the deal, but I don't recall now what these were.

And he, in joint discussion, came to the conclusion that Mr. Pierson, if he was willing to do it, would probably be a very good emissary to lay the groundwork with Air Italia.

I discussed this by telephone with Mr. Pierson, who [14106] accepted the assignment on behalf of Hughes, and then shortly after made a trip to Italy to discuss this with Air Italia.

As I recall it, he was going over there for some other purpose anyway, and he took this addition on a quiet basis, rather than make a special trip which would call attention to what was going on.

Upon his return, he advised me the results. While I am not absolutely sure, I am quite sure he advised the Hughes office of the results.

The impression I have now is that as a result of that effort, the four airplanes were ordered. However, I am not certain now whether they were initially ordered by TWA or Hughes, but I think it was by TWA because of TWA's long-standing association with Air Italia.

At that time Air Italia was on the verge of changing management, as I recall it, and there were some outstanding stock considerations that were of interest to the company.

Q Let me see if I understand your testimony.

These four aircraft were originally ordered from Lockheed by Air Italia?

A Yes, that's my understanding of it.

Q Then there came a time when Air Italia did not [14107] want the aircraft?

A There was indication that they wanted to be rid of the obligation.

Q Of acquiring those aircraft from Lockheed?

A Yes, sir.

Q Then Mr. Pierson negotiated with Air Italia?

A At Mr. Hughes' request through me.

Q That's right. You don't recall how the information reached TWA or Mr. Hughes as to the availability of those aircraft?

A No. This is the part that I don't recall at the moment. It seems to me that during the Hughes call, Hughes was very, very conversant with the situation, but, no, I couldn't say.

Q In any event, Mr. Pierson then negotiated with Air Italia for the assignment by Air Italia to TWA for the right to acquire these aircraft from Lockheed?

A I am not certain that he specifically negotiated an assignment. I don't recall that particularly. I think what he came to was general financial terms, which he then passed on to Mr. Hughes for Mr. Hughes' consideration.

Q Do you know what those terms were? Was it to acquire the standard price charged by Lockheed or was—

[14108] A No.

Q You have no information whatever on it?

A I think—I am sure I knew at the time the results of Mr. Pierson's visit, because I am quite sure he told me, but I don't recall now what they were.

Q Do you know whether or not anyone in the management group of TWA considered or discussed the desirability or the need for four additional 1649As, if they were available? Did you know anything about that?

A I am not clear on that, but I have the impression that the acquisition of the four additional airplanes was favored by the Traffic Department. But I don't have a specific recollection on it.

Q I notice at or about the same time, if you look at Defendants' Exhibit 163, namely, apparently the same date, April 23, 1958, TWA had also entered an order with Lockheed for four additional 1049Hs.

1049H, as I understand it, was 1049G originally built for somebody else?

A No, sir.

Q An H is a different aircraft from the G?

A Just as I testified to the other day, the H is a later version.

Q Convertible?

[14109] A Convertible from cargo to passenger and vice versa.

Q I remember now, yes.

Do you have any recollection as to how that acquisition came about?

A A great deal went on, I am sure, with respect to the H acquisition, with which I am not famiilar. Some of it I am familiar with.

Q First, let me ask you, was there any relationship to the acquisition of the four 1649As? In other words, at that time was TWA or its management trying to get additional aircraft? Were they looking around for some, did they need some more?

Can you tell us what happened, what desires were expressed by people within TWA management subsequent to the date when a contract was entered into for 25 Lockheed 1649As?

A Well, acquisition of the Hs was essentially a separate problem from the acquisition of the 1649As. No doubt there was relationship between the two with respect to dollar limitations the corporation had.

Q What was the dollar limitations you are referring to that the corporation had?

A I don't know. I am simply observing.

Q You were conscious of dollar problems?

[14110] Mr. Williams: That isn't quite what he said.

The Witness: Yes. This is not quite unusual for me to have some reasonable consciousness of dollar problems.

Mr. Williams: I think he said he might have been influenced by the financial position.

By Mr. Davis:

Q Tell us what it is you really have in mind when you refer to being conscious of the dollar limitation.

Mr. Williams: Is that generally or specifically?

Mr. Davis: I am now speaking specifically at that time, 1958, when TWA was giving whatever consideration was being given to Hs and additional 1649As.

A As I recall it, the negotiations for the Hs went on for some time, and some time during the time that Mr. Burgess was president. It was at the same time that the Viscount was dropped by TWA. The only understanding I ever had for the reason was that dollar limitations.

Q What do you mean by that?

A I mean the company thought it couldn't finance the airplanes, as I understand it.

Q That the company could not finance the airplanes?

A Yes.

[14111] Q I see. Otherwise, the expression is ambiguous. That is the only thing I am trying to do, to have you explain what you mean by "dollar limitation."

A All I meant was that the impression I had was that there was a limit to the number of dollars available to invest in these programs. There are always limits. But I had the impression that things were pretty tight at that particular time.

This whole thing might be a whole lot clearer if I took half a second to explain what the 1049Hs were for.

[14112] Q Good.

A As I recall it, the 1049H program was developed

as an outgrowth of an IATA agreement between the airlines to provide economy service in Atlantic operations.

Up until then, the airlines had provided first class and sky coach service fairly similar to first class and sky coach service in this country.

The concept, as I recall it, of the original economy service was that it would be limited to whole airplane lots, and it would be a completely austere service with minimum passenger space, and that it would be offered at substantially reduced rates.

I believe we and the overhaul base engineering group both looked at numbers of conversion possibilities of airplanes we already had and found that we were unable, as I recall it now, but I am a little vague, were unable to meet all of the criteria that had been laid down by IATA agreement.

Our traffic people, as I recall it, then thought that the super economy, or let's just say the economy service, would probably greatly expand the market, although they did recognize there would be some diversion from sky coach.

In any event—

[14113] Q Sky coach means ordinary coach, doesn't it, or does the word "sky" have a particular meaning? What do you mean by sky coach?

A Well, sky coach is a term that is applied to, you might say, second class service.

Q Coach?

A Coach.

Q All right.

A In other words, in those days, sky coach was provided with five across seating in piston airplanes, where first class was four across seating, and there was a difference in the level of service, as far as food, liquor and so on.

Q I am sorry, I interrupted you.

A The economy service was more austere, more Spartan than sky coach.

In order to provide airplanes for that service, Mr. Cocke felt strongly that TWA needed additional aircraft.

I believe this was arrived at after our efforts to convert existing airplanes had not produced satisfactory arrangements, but I am a little vague as to exactly what we did at this time.

Somehow or other, negotiations were undertaken or [14114] initiated with Lockheed for a fleet of 1049Hs, and I believe this was entered into on an exploratory basis. But I don't recall being a party to the initial negotiation. I have the impression that there were discussions between Mr. Burgess and Mr. Hughes on this point, but I can't really say that as a fact.

It is an impression I had then, as I recall it now.

Jack Weller, who was our vice-president of planning at that time, was involved in the negotiations with Lockheed. Lockheed dropped into the New York office quite frequently to talk about 1049Hs.

Leonard Schwartz of Lockheed was deeply involved in the 1049H negotiation with both Mr. Hughes and, to some extent, I think, with Lockheed, or at least some of Schwartz' people were in touch with Weller here in New York.

I remember one phone conversation with Schwartz during which he explained that he was discussing 1049Hs with Mr. Hughes and that he had a problem with respect to deliveries of aircraft because Lockheed could not obtain some of the equipment items on time, and as I recall it, these items were items that were normally, to some extent, at least, CFE.

The purpose of his call was to see whether TWA [14115] could provide the CFE. And the nature of the discussion was, as I recall it, I would explore it to see if it was possible,

that is, if we had the equipment, but I didn't see how TWA could provide CFE for an airplane ordered by Hughes.

Probably the best way to handle it, as I recall it now, was for Lockheed to simply buy that stuff from us, if we had it, and put it in those airplanes.

I contacted our divisional people. They reviewed the list of items, and it turned out they could make some equipment available and, as I recall it now, although I am a little vague, Schwartz, after a few more calls, did claim that he had talked to his people to accepting the purpose of this equipment from us for reinstallation or for installation, I should say, in the airplanes that were being discussed between Hughes and Schwartz.

I remember one call from Hughes. When I expressed wonderment, I guess, about the complicated nature of the negotiation, that is, that I certainly didn't understand who was doing what, it appeared to be negotiated, from where I sat and both New York and from the West Coast—I didn't really care because I wasn't called on to any great extent, but if I was to be called on I wanted to know what I was supposed to do and how.

[14116] He gave me the impression, then, that it was he who was negotiating, there was no question about that.

As I recall it, Schwartz had talked Lockheed into releasing eight airplanes on a speculative basis.

Q Releasing the airplanes to who, TWA?

A I'm sorry. I wasn't clear, Mr. Davis. Release eight airplanes on a speculative basis to the Lockheed production line. In other words, as I recall it, Lockheed started to manufacture eight 1049Hs on speculation pursuant to its understanding with Hughes.

Now, this, I believe, was what Schwartz told me at the time. I don't recall Mr. Hughes saying that. I believe it was four of these eight that were finally procured.

At the same time all this was going on, Hughes was

personally actively engaged in discussion with Carniscero and possibly others for the lease of 1049Hs by either Hughes or TWA.

As I recall it, we wound up leasing four 1049Hs, and we wound up buying four 1049Hs from Lockheed.

Q You leased four from whom?

A Well, I'm a little vague. The leases were arranged to an appreciable measure, as I recall it, through Mr. Carniscero.

[14117] Q Who is he?

A Well, he was in the business end of leasing airplanes, plus, I believe, some other business activities. But I'm not clear right now what he was doing then, other than what I am saying.

Q Is he an individual? Do you know his business address?

A Well, he is certainly an individual. At one time, at least, he had his office in Washington.

What I am not clear on, Mr. Davis, is whether all four were leased from Carniscero or through Carniscero through somebody else or only part of them were leased through him.

I think Mr. Hughes was giving consideration at that time to numbers of lease possibilities, and I think, if I recall correctly, he was not only working through Schwartz on some of these, who was still then at Lockheed, but also through one of the men down at Convair, Bob Connelley.

I had no part in the development of the lease itself. I think Raymond Cook was involved directly in that effort. In fact, I don't recall having any understanding of the lease terms until after the lease was drawn up. I'm certainly not saying that no one at TWA might not have [14118] known. I did not.

I recall receiving requests from the Hughes office, and I later discussed this directly with Mr. Hughes, that upon

receipt of first one and then later two of the airplanes in Kansas City, they were to be placed under armed guard until they were released by Mr. Hughes personally through me.

As I recall it, the release of one or both of these airplanes were flown to Kansas City and receipted for prior to the lease terms, worked out between Hughes Tool and Garniscero. These ships were under guard night and day until word was received to release them.

I remember Ray Cook discussing efforts he was making to get them released so that TWA could put them to work. And I remember he was concerned with the technicality of the lease which had been worked out which, in his view, called for payment even though the airplanes had not been released at Kansas City.

I also recall Mr. Hughes calling me one day—I don't remember exactly when this was—and asking whether TWA really had any use for these airplanes. I think in this case he was talking about 1049Hs generally. I don't associate, at least in memory, either the Lockheed or the leased airplanes specifically, although it might have [14119] been limited to one or the other.

I told him, as I recall it, that our traffic department had been urging that TWA obtain these airplanes. As a matter of fact, Cocke had called me several times, and I'm quite sure he called Mr. Gay as well, to try to or to request me, at least, that when I could to try to talk Hughes into the Hs.

I'm quite sure Burgess had the same thoughts at the time. The reasons, as I understand it, for Cocke's interest was primarily that he felt that if we didn't have airplanes that were fully suited for economy service, we would be operating at a disadvantage the following season in the Atlantic, because he felt others would have them.

That's about all I recall on the Hs.

Q There is only one part of your testimony which is not quite clear to me. Defendants' Exhibit 163 indicates that these four Hs were acquired by TWA directly from Lockheed. Is that in accordance with your understanding, or do you have a different understanding as to how TWA acquired— I am talking about the ones acquired, not the leased ones. Were they acquired from Lockheed?

A I don't recall, Mr. Davis, what form that contract finally took. There is no doubt in my mind as [14120] to who conducted the primary negotiation. It was conducted between Schwartz and Hughes. But what form the paper finally took, I, frankly, don't recall.

Q The reason I was interested in that, Mr. Rummel, was this reference to TWA selling some CFE equipment to Lockheed for installation on those aircraft. It's not clear to me what happened.

Did TWA sell to Lockheed some equipment for installation in those Hs?

A As I recall it, Mr. Davis, we did as a completely separate transaction. I think the purchase order was issued by Lockheed and we filled it.

What the provision people looked at was whether or not they could release equipment without handicapping our operation, and that was sold to the extent that that could be done, but with the understanding, of course, that Hughes was, in fact, negotiating and we might get the airplanes.

But there were no strings attached to it. It was simply a sale, as I recall it.

Q Am I to understand it that TWA in addition to those four aircraft also leased two 1049Hs?

A What I don't remember is whether we leased them from the Tool Company or whether we leased them directly [14121] from Carniscero.

Q How many aircraft were involved?

A As I recall it, it was four.

Q Four more?

A Yes. That's the number I remember. Now, perhaps checking further would reveal it was five, but I think it was four.

Q In addition to the four that were purchased?

A Yes. This was in addition. I think it was four. I'm not completely sure of that. It was at least four, though.

The lease, these four, was the—the lease I referred to was the one Raymond Cook had participated in directly. I have the impression that Mr. Hughes negotiated lease terms. This is the impression I had then. Perhaps he and Ray, but I think he was involved in developing the terms of the lease.

* * *

[14127]

* * * *

Q Will you completely describe the consideration given by TWA to Electras?

A TWA made numbers of studies showing what it could expect from Electras, and on occasion met with Lockheed to discuss Electras and on other occasions did not meet with Lockheed from instructions from Mr. Hughes on the Electra project.

The TWA position, generally speaking, at least the technical position, was that we were more prone to move toward the jets and less prone to want turboprops, particularly considering what we then thought were so unsolved technical problems with relation to the power plant propeller, the combinations that were being offered.

Q Is that the entire testimony that you can give?

A Yes. Well, I think I am repeating. As I say, I had numbers of discussions with Mr. Hughes from time to time to answer his questions on Electras.

[14128] As I recall it, quite late, I believe from late 1959 or 1960, Hughes was working with Lockheed to some extent with respect to possibly Electra acquisitions. Lockheed had indicated that he had a strong interest in the airplanes cancelled by Capitol. I have gone into that.

I know one airplane, I think the No. 1 Electra, was under guard by Hughes at the Lockheed plant for some time. I remember Jack Reed had indicated Mr. Hughes had flown the Electra numbers of times to personally evaluate some of its characteristics. Hughes indicated to me once it was a sweet flying airplane.

He certainly had an interest in the modification program that resulted from the accidents. He wanted to know just what was being done to correct them and so on, but I believe I have testified from time to time in these areas.

Q I am not asking you to repeat any of that, Mr. Rummel. What I am interested in knowing is merely whether or not you are famiilar with any discussions or meetings of the TWA management group relative to either the desirability or lack of desirability of acquiring a fleet of Electras to supplement the TWA fleet?

A I can't be specific now, Mr. Davis. I recall having [14129] discussed some of the technical and performance features of the Electra with Mr. Collings probably on several occasions. This was done not only with respect to the Electras but also the 1449A, that is, with respect to the turboprop; installation and what it demanded of the airplanes with respect to structural strength.

Maybe to explain that, it was inconceivable at the time, as Lockheed expressed it, to build a plane sufficiently strong to withstand the drag that could be built up from a rotating propeller with a propeller hooked as it is, to the compressor. This drag was so high as to literally tear the airplane out of the sky. And this was the reason why—there is no mystery to this, it is just there—so much effort had gone

into developing mechanical devices and gimmicks to avoid that occurring.

The Electra, as I recall it, finally had three different protective systems to prevent this from occurring. We were somewhat reluctant—I mean, this being one of the considerations I discussed with Collings—to hang the safety or the faith of the airplane on the proper working of a little gimmick. We wanted some inherent characteristics, such as a structural tail strong enough to take the load if that happens so that the plane itself could be recontrolled if control was lost.

[14130] But there were a number of considerations that I undoubtedly discussed with Mr. Collings and with others, partly by way of explanation what the plane appeared to be and partly with respect to what we thought of it.

Q One of the reasons for our inquiry, Mr. Rummel, is that the recollection of Mr. Tillinghast during the course of his testimony, while never saying so specifically at one point, I thought might have been intimating an understanding that at one time TWA, or its management, would have liked to acquire Electras. That is what I am trying to inquire into.

To your knowledge, was there any time when anybody at TWA wanted to get Electras and that idea was vetoed by Mr. Hughes or the Hughes Tool Company or anything like that? Did that ever happen?

A If you are asking whether or not at any time anybody in TWA might have wanted an Electra, I just don't know. I sure would be surprised if a few people didn't.

Q If what—

A If a few people did not from time to time want the Electra. I don't recall it ever being a solid management position that we wanted Electras.

* * *

[Testimony — October 11, 1962]

* * *

[14389] By Mr. Davis:

Q You have had a chance to read what has been marked as Defendants' Exhibit 174?

A Yes.

Q That is a letter that you wrote to Mr. Spater?

A I believe so.

Q Mr. Spater at that time was a partner of general counsel for TWA?

A Yes, I believe so.

Q Annexed to this is a draft of a letter addressed to Mr. Yost of Lockheed. That was also prepared by you, was it not?

I think I participated in the preparation of it. I think by the time it got to this stage numbers of us had looked it over, probably including counsel.

Q You recall the circumstances relating to this letter per Mr. Carter Burgess' suggestion, and the draft some of you prepared. Can you tell us about it, can you tell us what happened?

A My recollection of the circumstances that existed around the time this letter was written would be one thing, and I can give that, as I recall them. To recall the specific circumstances that prompted this specific letter, I am a little more vague, but I think they all dovetail [14390] together.

Q Do the best you can.

A Well, I recall at one point, after it became known that the airplane had numbers of deficiencies, I reviewed these with Mr. Hughes.

I don't recall the date, but I recall that Hughes asked that we do nothing which would in any way undermine our rights to cancel the contract.

At the same time, or thereabouts, Lockheed had under way extensive flight test programs for reducing the drag and improving the performance of the airplanes.

These tests were undertaken by Lockheed in obvious recognition of the initial deficiencies of the airplanes.

Now, as I recall it, at the time this letter was written, quite a few of the initial deficiencies had been improved. They hadn't gotten all the performance back that they had expected to, but they had made improvements.

I might say too that the flight tests involved any number of bread board filleting arrangements, including new nacelle afterboards, new nacelle underboards, changed wing tips, changed wing fillets, and other things, all aimed toward reducing the drag.

Numbers of items that came out of these tests [14391] were installed in the airplane by Lockheed at Lockheed's expense. At one point Mr. Hughes directed that—well, I am sorry. I am ahead of my story.

I don't recall how this suggestion came from Mr. Burgess. At one time, prior to accepting any airplanes, Mr. Burgess appointed a shotgun committee, so to speak—

Q You call it a shotgun committee. I have been calling a task force. You have been calling it a shotgun committee?

A Call it a shotgun task force.

Q All right.

A In other words, it was appointed for a specific purpose, and it was intended that it act on an expedited basis.

Q Who appointed this task force or shotgun task force and who was on it?

A I believe Mr. Burgess did, and as I recall it, Mr. Weller was acting as chairman, I was on it, I believe Ray Dunn was on it, and it's quite possible there were one or two more that I don't recall.

But the purpose of this particular committee which was

appointed, oh, fairly shortly before airplanes—before it appeared that airplanes would be tendered for delivery was to evaluate, as I recall it now, the economic [14392] impact of the deficiencies and to provide a basis for the further—for further negotiation with Lockheed for improvements in the deficiencies or for corollary corrective action.

By that latter comment I mean that part of the problem, as I recall it, was lack of availability of certain spare parts rather than design.

I think the committee worked on both of these things, but I think, as I recall it now, they primarily worked in the area of specific deficiencies.

I think Mr. Ellinger and Mr. Rourke participated in some of the committee meetings. As I recall it, just prior to—well, let me say, I believe this letter was written—I am not really certain—around the time or maybe a little bit before this committee was acting, and, as I recall it, it was believed that some sort of a record should be made with Lockheed which would put them on notice that even though we were working along on the airplane with them, that is, we continued to inspect and we continued to do the things that are necessary to be done prior to acceptance, even though that was going on, they shouldn't misconstrue that as in any way accepting the deficiencies.

As I recall, it was that kind of thinking that went into this. It was to preserve our maximum rights in [14393] the event the decision would be made to cancel or, at the same time, to preserve, to the greatest extent that we could, a position for negotiating improvements.

Prior to acceptance I went to the West Coast, along with, I believe, Mr. Rourke and some other engineers, Jack Weller was there, and we undertook, and I am just a little vague now on the detail here, but I think we either tried to complete—I am pretty sure we then tried to complete negotiations that were then well under way to obtain com-

mitments from Lockheed for corrective action to the extent that such corrective action appeared attainable, even though that action could not be taken or the corrective designs installed until after delivery.

In other words, as I recall it, at that time, because of the deficiencies in both design and performance, we attempted to exact from Lockheed as a consideration to acceptance Lockheed's commitment to correct subsequent to delivery.

I don't recall the detail, except I do recall that we did obtain some concessions and on numbers of items we did not.

By this time the contract, as I recall it, had been assigned to TWA, but this distinction between thirteen and twelve that you showed me the other day still [14394] mystifies me. The airplanes were accepted, whereupon, in short order, we had more trouble than we bargained for in a good many areas, including propellers. The propellers had to be changed, that is, propeller blades had to be changed, and fortunately for TWA, we were able to effect a rapid change, because when I had agreed to put on the hollow propeller blades I also had required, and the manufacturer of blades agreed, to have solid blades available at its own expense as a backup guarantee, and on a basis that would permit very rapid completion of these blades for installation if that should become desirable.

We had taken a similar course earlier on the 1049G when we tried to install the Curtis propeller in that type airplane.

That is, when we considered the hollow steel blades we had worked out with Curtis a backup provision for the aluminum blades.

This was done not because we thought the blades would fall apart, because if I had thought that I never would have selected them, but they were new, and it was done simply as a precaution.

But through having had that arrangement the debacle was much less severe than it turned out to be in that particular respect.

[14395] I mean, it was much less severe than it would otherwise have been because of that arrangement. After the airplanes were in service there were further talks with Mr. Hughes and with Mr. Burgess on my part.

At one point, as costs mounted, because of numbers of things, propellers being one, auto-pilots another, engines still another, and I believe a few more, Hughes directed that we keep very careful records with respect to the extra costs that were being incurred because of the deficiencies.

Q Because of what?

A The deficiencies in the airplane design, including performance, and at one point he requested that Mr. West and I give particular—this is Harry L. West, not Mickey West—give particular consideration to whether or not there was a basis for suit.

Q Against Lockheed?

A Against whomever there was a basis for a suit with, including Lockheed, the engine manufacturer, the propeller manufacturer, and I believe the auto-pilot manufacturer.

He didn't limit it, as I recall it. In fact, I think that he made it quite clear that he intended not to limit it.

[14396] Later on he asked that a specific bill of particulars be drawn up. I advised Mr. Burgess of this, and what we were doing, Spater was knowledgeable on it, and I certainly had the impression that Carter Burgess shared Hughes' view in this respect, by all means this should be done, and we should give serious consideration to whether or not it would be good grounds for suit.

We set up internally—we didn't set them up; they were set up because we asked they be set up—internally various special accounts. We considered offsets and other things.

In the end there were no suits. However, accounts were

kept, as I recall it, for an extended period. I believe it was well over a year, possibly a year and a half.

Of course, while all this was going on TWA engineering, including our own efforts as well as the efforts of the overhaul base, were intense with respect to trying to work out improvements in the airplane, and trying to get the manufacturers, whether it was equipment, or what it was, to work out improvements, so that our operation could be improved.

These efforts ranged from redevelopment of a hydraulic valve in the auto-pilot control system to engine [14397] redesign, as I recall it.

The reliability of the airplane was not good. I am speaking now of schedule completion reliability, not safety particularly, although the propeller bordered on being a safety item.

This may have accounted, to some extent, for the poor public response to the airplane initially. It was an appreciable period after this, I don't recall the exact timing, that we finally did come to a settlement with Lockheed as to the claims that had been made, and as I recall it, there was some sort of a settlement with the engine manufacturer, but as I recall it now, I didn't participate in that.

I might say that the accounts as they were kept were circulated rather widely in the company as costs continued to be accumulated, there were a number of discussions, meetings and whatnot, as to what should be done next.

The Lockheed speed guarantee, I do not remember the detail, but it had a guaranteed speed at one point, that is, at one altitude power point.

We had tried to have a speed curve guaranteed rather than one point on a curve guaranteed during the early negotiation and had not succeeded. The point that [14398] was guaranteed had a negative tolerance, which was customary, and the—our review of the performance data indicated that while Lockheed had not met the minimum guar-

antee, it was so close to meeting the minimum by the time they had made these corrections that while we could claim that it had not met them we couldn't claim substantial adverse effects, as I recall it, on the operation on that account alone.

At least, there was some legal question, as I recall it, as to whether or not the difference was great enough, with strict reference to the contract, to make it a really important point.

But unfortunately the effect on our operations was much greater, because we didn't hardly ever fly at that particular speed power altitude point.

We flew at many other altitudes, and unfortunately, as I recall it, when the airplane was flown at lower levels the speed difference or deficiency was much greater than it was at that particular guaranteed point.

This I think is all I recall, Mr. Davis, of the circumstances that surrounded this particular memorandum.

* * *

[14411] Q Can you identify what has been marked as Defendants' Exhibit 175, Mr. Rummel?

A Well, this appears to be a statement of the charge that the task force had that I mentioned a moment ago in my testimony, and also a list of the members of the task force.

Q Do you know who prepared it or how it was prepared?

A No.

Q Do you recall whether this was something that you discussed with Mr. Burgess?

A Well, as I indicated, my recollection is that Burgess asked Jack Weller to head up the task force, and Weller came to Kansas City, where the task force met.

Q But you don't know who initially described or identified what the objectives or purpose of the task force was to be?

A No.

Q You see the first item reads:

"Determine whether we want 1649s despite known problems relating to performance."

A Yes.

Q You don't know who suggested that that should be one of the objectives of the task force?

A No, I don't specifically. It certainly is one of [14412] the questions that was front and center at that time.

Q I understand that, but I am trying to identify whether that was a question which originated from Mr. Hughes or a representative of the Hughes Tool Company, or whether that was a question which originated from Mr. Burgess or Mr. Weller or someone within the TWA management group.

A Well, I don't know how it originated. As to how it got assigned, I would assume, and I don't know, that Burgess assigned this to the task force, but I don't know. It originated out of the dilemma that existed, that is, the 1649As were short.

* * * *

[14418] A Well, as I indicated, I had the impression that Burgess set up this particular task force. I don't know whether this was cleared with him, but I assume that Weller did.

Q Do you know whether or not it was submitted to Mr. Cook for clearance with Mr. Hughes.

A Not really, no.

Q Do you recall discussing with Mr. Hughes the purpose or objectives of this task force?

A No.

Q While I am on the subject of the task force perhaps I better complete it.

Mr. Davis: May I have marked for identification a memorandum from Mr. Weller to Mr. Burgess under date of March 8, 1957, entitled "Report of Task Force to Consider 1649A Deficiencies."

(Photostat of memorandum to Mr. Carter L. Burgess, from Mr. J. L. Weller, dated March 8, 1957, Subject: Report of Task Force to Consider 1649A Deficiencies, consisting of seven pages, marked Defendants' Exhibit 176 for identification, as of this date)

The Witness: I have read the letter.

[14419] Q Do you recall the meeting in your office on March 8th by the task force?

A Yes, I recall the task force having met there.

Q Defendants' Exhibit 175 refers to Mr. Weller, chairman, and then has "Deadline: 1 week."

Does that indicate that the task force had been given a deadline of one week to make a report, do you know?

A Well, I don't know if Weller gave himself the week to report back or whether that was the deadline given him.

Q What I am trying to determine, Mr Rummel, with these documents, is whether or not that refreshes your recollection as to when the task force was appointed and the period of time during which it functioned in relationship to this meeting in your office on March 8th. Does that help you in any way?

A Well, the only meeting of the task force as such, as I recall, is the one that is referred to here.

Q What I am trying to find out is how long the task force had been operating before March 8th.

A I think it was shortly before March 8th, within a day or so.

Q Then there was something which took place subsequent to the correspondence reflected by Defendants' Exhibits 174 and 175? That is all I am trying to establish at the [14420] moment, Mr. Rummel.

A Yes, I am quite sure. Excuse me. I don't know that it was before 175.

* * *

Q My question to you, Mr. Rummel, is whether Defendants' Exhibit 176 fairly and accurately reflects the conclusions reached by the task force.

A I certainly have no reason to doubt it.

Q Was everybody on the task force in accord, or was there some substantial or major difference in opinion?

A Gee, I couldn't say whether everybody agreed on every point, Mr. Davis.

[14421] Q The major points, the major conclusions.

A As I recall it, the minutes and the report were written immediately following the meeting of the task force, and were then read by the task force prior to being issued.

Q Do you know whether or not the task force made further reports as to developments to Mr. Burgess?

A No, I don't. I don't recall any.

* * *

[14444]

* * *

Q You previously testified that, in effect, a decision was made to accept the 1649s because, as I recall, you said at that time there was little choice.

A Yes.

Q Do you recall how that decision was arrived at, who participated in it?

A The choice, as I recall it, was getting 1649As or [14445] getting nothing. I think the task force conclusions probably set the die, so to speak. Just exactly who made the decision to take the airplanes, I don't know, but I think it was made in New York, and I believe that it was based on the recommendations that the task force came forward with, although there may well have been other considerations.

[14446] Q You had no part personally in the making of that decision, other than your participation in the recommendation of the task force?

A I think that's right. I think the task force was quite clear in that respect. They recommended this at that point as the lesser of the other evil, which was not getting airplanes at all.

Q You previously testified that there came a time when a settlement was negotiated and made with Lockheed, the engine manufacturers. I don't know whether you also mentioned the propeller manufacturers.

I am correct, am I not, that there came a time when such settlements were negotiated and concluded?

A Yes.

Q Will you now describe how those settlements came about?

A Well, I am a little vague here. I think the final washing out of the claims was handled to a great extent as an offset, and as I recall it, in the latter stages I assigned the negotiation to Russ Rourke.

The issue became involved not only with the initial 1649A records that we kept, but subsequent warranty claims that had not been satisfied, and additional claims that Lockheed had made on TWA with respect to landing gear [14447] improvements which were in dispute. I don't believe that phase was finally settled with Lockheed until well into the Thomas regime, as I recall it.

Q The Thomas regime?

A Yes. As I recall it, the engine meeting, at least, the one I was referring to, I was only told about. I am quite sure that was handled in Mr. Pierson's office, and there again, I think it included not only the specific items that came out of the early 1649A operation, but many others, and that there was some sort of an overall settlement arrived at with Wright.

However, I did not participate. I would be unable to tell you anything other than what the impression was that I had then as a result of hearing of it. I didn't participate in that activity.

Q Who basically was in charge of carrying out those negotiations?

A My recollection is that it became a Ray Dunn obligation, but I believe Ray called on Mr. Pierson and others to lend muscle.

Q During that period what was Mr. Ray Dunn's position?

A I think he was vice-president of engineering and maintenance, or possibly his title was maintenance and overhaul. I think it changed at one point or the other.

[14448] Q Did Mr. Hughes or any other representative of the Hughes Tool Company take an active part in those negotiations?

A Not that I knew of.

Q You say that those negotiations were basically an offset. It is not clear to me. An offset to what?

A With respect to cash.

Q I beg your pardon?

A With respect to the handling of cash. One was offset against the other. Lockheed had claims on us, we had claims on Lockheed. One offset the other, after they were negotiated.

Q Those negotiations were based upon the records

which had been established and kept of the cost to TWA of those deficiencies?

A As I indicated, Mr. Davis, that plus more.

Q Plus?

A More. I think, as I recall it, there were additional warranty items and claims that were not specifically covered by those lists that crept into it.

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[Testimony — October 16, 1962]

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[14504]

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Q I would like you to describe the effect on the equipment needs of TWA or Northeast as a merged operation. In other words, I would like to know whether or not the result of a merger of Northeast to TWA would have the effect of increasing the need for aircraft equipment, or would have the effect or tendency to decrease the need for equipment.

• • •

[14505]

• • •

Mr. Williams: Do you understand the question?

A I think so. In my personal opinion, the equipment needs of the combined two carriers over the short term would be less than the separate needs of the two carriers added together.

Q You say "over the short term." Will you explain what you mean by the short term?

A Whether or not it would be true over the long term, I think would depend on the success the combined operation would have in penetrating the Miami market.

Q You mean if you assume a growth in traffic, this might have the effect of increasing the need for equipment?

[14506] A Growth for the combined carrier, separated from growth for the industry. I am talking about market penetration.

Q I wish you would explain that a little more fully, Mr. Rummel, because I am interested in the basis for your answer, as well as the conclusion in your answer. Describe the impact of such a merger upon the equipment needs of the two carriers as separate carriers, distinguished from a combined carrier. Make the same assumptions as to market penetration, if you please, or lack of market penetration.

Mr. Williams: I think he tried to do that. He may have been briefer than you want him to be, and perhaps he can elaborate on it.

Mr. Davis: That is what I want him to do. I want him to explain the basis for his conclusion, as well as the conclusion

A Northeast being a north-south operator essentially has a peak in its business around the first of the year. TWA being primarily an east-west operator has a peak such that it could reasonably be expected to make equipment available for the north-south routes, or putting it a different way, come up with a total equipment requirement somewhat less than the separate requirements of the two [14507] operators combined.

Whether or not this in fact would prove to be the case depends on a number of things other than what I have just said, but it would be reasonable to think that to some degree at least that would obtain.

Over the long term if the combined operation would be more successful with respect to market penetration than the two separate corporations, and if greater growth resulted than that experienced by Northeast alone, say in the Miami market, then it is conceivable that the equipment

needs over the long term would be greater as a reflection of the success of the merged venture.

This really was all I was trying to bring out.

Q Whether it be over the long term or the short term, if you make the same assumption as to success of operations, the result would always be of lessening the need for equipment rather than increasing it[?]

A If you assume that Northeast as a separate corporation would be just as successful as it would be if it were merged with TWA, and that TWA would be just as successful without Northeast as with it, that would be true[.]

* * *

Q Can you tell us what views, if any, Mr. Thomas expressed at that meeting as to his own views?

A As I recall it, he indicated he wasn't about to submit sketchy data to the board. That he wanted to see a more complete presentation before he would be willing to put anything before the board for decision. I don't recall him stating his personal opinion as to the desirability of a merger.

Q Do you recall what views, if any, were expressed by any other senior officer of TWA at about that time?

A Not specifically, no.

Q Generally.

A I certainly had the impression that Cocke favored [14510] the merger. I don't remember Leslie being commital one way or the other.

Q Any of the others?

A No.

Q Do you recall what reasons, if any, Mr. Cocke advanced for his position?

A No, sir; I don't.

Q Let me refer you again to what has been marked as Defendants' Exhibit 98, on page 8, that portion of the second paragraph which reads:

"One comes to the conclusion the merger of the two companies represents the only opportunity that will present itself from TWA's point of view to acquire a complementary dense traffic route susceptible of major exploitation occurring during TWA's low traffic season."

Did you ever hear that point of view expressed within the management of TWA?

A No, I didn't.

Q Do you agree with that?

A No, I do not.

Q You hold different views?

A I don't agree with this statement.

Q Did you ever express your point of view or your [14511] disagreement with this statement to anyone at TWA?

A I don't recall ever having done so. I don't recall ever having been called on to do so. I don't think I would have hesitated had I been called on.

Q I am sure of that. What I am trying to find out, Mr. Rummel, is whose views did this reflect—this statement that I have just read to you? I understand it is not yours. Now I am trying to find out who felt that way.

A I believe this was put together by Mr. Leslie, as I indicated, but whether these are Leslie's personal views or not, I don't know.

Q We will find out from Mr. Leslie. Now let me refer you to what has been marked as Defendants' Exhibit 102, Mr. Rummel, which has already been identified on the record, I believe, as being handwritten notes of Mr. Thomas.

Do you recognize Mr. Thomas' handwriting when you see it?

A No, sir, I do not.

Q You see on the second page the statement reads:

> "As you know, the board of directors at its meeting on May 13th gave preliminary consideration to the proposed NEA-TWA merger, in which TWA would [14512] be the surviving corporation."

You were not at all familiar with the action taken by the board on May 13, 1960?

A No.

Q The next sentence reads:

> "At that meeting we had a preliminary report presented by Mr. Leslie, and that was favorable."

I take it from your prior testimony that you are not familiar with that preliminary report or what its conclusions were?

A No, I believe that was Exhibit 98.

Q That was not discussed by you with anyone else at TWA?

A I don't recall being a party to that.

Q Now look at the next sentence which reads:

> "As a result the board appointed a special committee of Messrs. Pierson, Cocke, Leslie, Holliday and myself to have prepared a full-scale review and study of the proposal and present it at this meeting."

Do you have any information as to the functioning of the special committee referred to?

A No, sir, I don't recall that it existed.

* * *

A-871

Defendant's Exhibit 11-A.

[19142]

SIMPSON THACHER & BARTLETT
120 BROADWAY
NEW YORK 5, N. Y.

Commerce Building
1700 K Street, N.W.
Washington 6, D. C.

May 16, 1961

The Board of Directors
Trans World Airlines, Inc.
New York, N. Y.

Dear Sirs:

We have been retained to advise Hughes Tool Company in connection with matters pertaining to its beneficial ownership of approximately 78% of the outstanding common stock of Trans World Airlines, Inc. (TWA), and in connection with its acquisition and possible distribution of debentures to be acquired by it from TWA, pursuant to the offering described in a registration statement filed with the Securities and Exchange Commission (File No. 2-17847).

Based on a limited investigation to date, we are concerned that said registration statement may be deficient in certain material respects, and that our client may be subjected to liabilities under the Securities Act of 1933, even though it has not participated in the preparation of said registration statement and has not been consulted with respect to its contents.

In the circumstances, we must request an opportunity to present to the persons constituting the Board of Directors of TWA various matters which require consideration [19143] before the contemplated registration statement becomes effective. Some of these matters are based upon

the position of our client with respect to action taken by the management of TWA since the establishment of a Voting Trust at the insistence of certain lending institutions presently controlling the Voting Trustees, and with respect to the fiduciary duties and obligations which said lending institutions, the Voting Trustees and the Board of Directors elected by the Voting Trustees, owe to our client as the beneficial owner of more than 78% of the presently outstanding common stock of TWA.

We have been requested by our client to make every effort to resolve in an amicable manner any difference of opinion which may exist, and we would welcome an opportunity to discuss these matters with such persons as you may designate. Please communicate with Mr. Chester C. Davis in connection with this matter.

Very truly yours,

SIMPSON THACHER & BARTLETT

A-873

Defendant's Exhibit 11-B.

[19144]

May 19, 1961

Re Registration Statement of Trans
World Airlines, Inc.
(Registration No. 2-17847)

Trans World Airlines, Inc.
380 Madison Avenue
New York, N. Y.

Attention: Mr. Charles C. Tillinghast, Jr., President

Securities and Exchange Commission
Washington 25, D. C.

Attention: Mr. Ralph C. Hocker

Gentlemen:

At the hearing held before the Securities and Exchange Commission on Thursday, May 18th, relating to the request of Trans World Airlines, Inc. (TWA) that the effective date of the above Registration Statement (Registration Statement) be accelerated so as to become effective on May 18, 1961 and the objection made by Hughes Tool Company (Toolco) to the entry of an order granting such request, this firm was directed by the Commission to confirm to TWA and to the Commission in writing today certain undertakings made by this firm at such hearing on behalf of Toolco, and was further directed to provide TWA with a detailed statement as to the respects in which [19145] the Registration Statement may be deficient. This letter is being delivered in response to and, to the best of our ability and knowledge at the present time, in compliance with such direction.

Defendant's Exhibit 11-B.

Mr. Chester C. Davis, a member of this firm, was retained on Monday, May 15, 1961 to advise Toolco in connection with matters pertaining to its beneficial ownership of 78% of the outstanding Common Stock of TWA and in connection with its acquisition and possible distribution of that portion of the 6-½% Subordinated Income Debentures (Debentures) with Common Stock Purchase Warrants (Warrants) attached to be offered by TWA to its stockholders as set forth in the Registration Statement which Toolco is obligated or entitled to acquire pursuant to existing agreements with TWA. Up to the present time Mr. Davis is the only person associated with this firm authorized by Toolco to commit Toolco with respect to any of the matters hereinafter set forth. This firm had not been previously retained by Toolco for any purpose. On Monday, May 15, 1961, this office undertook an examination of the extensive documentary material relating to the rights and relationships between Toolco and TWA and the information contained in the Registration Statement filed by TWA with the Commission. At that time the only Registration Statement available for examination by this firm and to other representatives of Toolco available in New York City were the Registration Statement originally filed with the Commission on or about [19146] March 30, 1961, Amendment No. 1 filed May 11, 1961 and Amendment No. 2 filed May 12, 1961. On the following day we requested and received from counsel for TWA copies of exhibits to the Registration Statement.

On this same day, Mr. Davis met with Mr. Forrester, an officer of Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill Lynch) and two members of the firm of Shearman & Sterling, who were acting as counsel for Merrill Lynch, to consider a proposal contemplating the formation of an underwriting syndicate by Merrill Lynch to purchase from Toolco and distribute to the public Deben-

tures and Warrants to be acquired by Toolco from TWA pursuant to the agreements referred to above.

We are informed and believe that Toolco on Wednesday, May 10, 1961 for the first time decided to make a public distribution of the securities being offered by TWA to its common stockholders, and immediately thereafter negotiations were undertaken on behalf of Toolco with Merrill Lynch. At that time Merrill Lynch advised Toolco that it was prepared to undertake to form an underwriting syndicate for such a public distribution, provided that TWA would delay the effective date of its Registration Statement for one week, and with certain commitments by Toolco in satisfactory form. We are further informed and believe that Merrill Lynch discussed its proposal with Mr. Tillinghast, President of TWA, [19147] on Friday, May 12, 1961, with a request for the necessary postponement, after having discussed this matter with counsel for TWA, counsel for the Voting Trustees and Mr. Leslie, Financial Vice President of TWA, on the preceding day, Thursday, May 11, 1961. At that time Merrill Lynch was proposing to form an underwriting syndicate for a firm underwriting which would insure the receipt by TWA of more than $11,000,000 of new money at no cost to TWA, such cost to be borne entirely by Toolco.

On Monday, May 15, 1961, we were advised by Merrill Lynch that action on its proposal, including a possible postponement of the effective date of the Registration Statement, would be considered at a meeting of the Board of Directors of TWA to be held on Wednesday, May 17, 1961, and that any action on our part or any communication on our part to TWA or its counsel relating to possible deficiencies as to the Registration Statement then on file with the Commission would jeopardize favorable consideration by the Board of TWA. Mr. Forrester stated to representatives of Toolco, including Mr. Howard Hughes, the sole

owner of Toolco, that in its judgment, based in part on conversations with TWA or its representatives, this firm should not take a position or communicate with TWA or its counsel with respect to the adequacy of the Registration Statement until the Board of Directors of TWA, at a meeting to be held on Wednesday, May 17, had had an [19148] opportunity to consider and act upon the proposal and request of Merrill Lynch. At the same time Mr. Davis was requested by Merrill Lynch and its counsel to take appropriate steps to obtain the necessary corporate authority of Toolco so as to enable Mr. Holliday, a Vice President of Toolco, to enter into an appropriate firm commitment between Toolco and Merrill Lynch with respect to the public distribution desired by Toolco. The requirements of Merrill Lynch in this regard occupied Mr. Davis and others associated with this firm until approximately 1 A.M. Tuesday, May 16, 1961. In the meantime, another member of this firm and several other associates began to review the Registration Statement then available to this firm. There are attached as Exhibits A and B hereto certified copies of the excerpts of the minutes of the Board of Directors of Toolco adopted on Monday, May 15, 1961, and letter dated May 16, 1961 executed by Mr. Holliday and delivered to Merrill Lynch the evening of May 16, 1961.

We are informed and believe that copies of Exhibits A and B were delivered to TWA or its president advised of their existence on or before the meeting of the Board of Directors of TWA on May 17th. In the evening of Monday, May 15th, Merrill Lynch advised Toolco and Mr. Davis that it had made arrangements to meet with responsible representatives of TWA in the morning of Tuesday, May 16th, for the purpose of discussing further the merits of their proposal, its advantages [19149] to TWA, and their opinion that there could be no disadvantage to TWA in consenting to the requested postponement of the effective

date of the contemplated Registration Statement and offering. In order to eliminate a problem presented by Merrill Lynch to Toolco which had been discussed by Merrill Lynch with TWA or its counsel or counsel for the Voting Trustees, with respect to an assurance that the interest coupons on the proposed Debentures would be paid on June 1, 1962, Mr. Davis with other representatives of Toolco undertook to commit Toolco to provide the necessary funds in cash, in trust, to be available to Merrill Lynch, to assure such payment. The corporate action taken by Toolco in that regard is reflected by Exhibits A and B.

On Tuesday noon of May 16, 1961, Mr. Forrester of Merrill Lynch informed Mr. Davis that instead of meeting with representatives of TWA he desired a further meeting and conference with Mr. Davis and other representatives of Toolco to be held at 2 o'clock of that afternoon. Such a meeting, which lasted until after 4:30 of that afternoon, was held and attended by Mr. Davis. In that conference, Merrill Lynch expressed confidence that TWA would favorably consider the proposal submitted to it by Merrill Lynch. At the same time, Merrill Lynch and its counsel advised Toolco that any assertions by it with regard to deficiencies in the Registration Statement or in connection with possible [19150] claims arising out of the relationship between TWA and Toolco would seriously jeopardize the prospects for favorable consideration of the Merrill Lynch proposal by the Board of Directors of TWA. Merrill Lynch assured Mr. Davis and other representatives of Toolco that it was convinced that the Merrill Lynch proposal would receive full and fair consideration by the Board of Directors of TWA at the meeting to be held on Wednesday, May 17. Believing that TWA, having everything to gain and nothing to lose, would postpone the effective date of the Registration Statement and accept the Merrill Lynch proposal, Toolco instructed this firm to defer presentation of matters

of concern to us until after action by the Board of Directors of TWA, in the expectation that there would be adequate opportunity at such time to suggest revisions of the Registration Statement and permit consideration by TWA and Toolco of their respective positions upon various aspects of their prior relationship.

Some time after 6:00 P.M. of the evening of Tuesday, May 16, 1961, Mr. Forrester advised representatives of Toolco that a meeting had been had with Mr. Breech, Chairman of the Board, and Mr. Tillinghast, President of TWA, and that TWA had received a further presentation by Merrill Lynch. It now appears as a matter of record before the Commission that on Tuesday, May 16, 1961, there [19151] was filed Amendment No. 3 (hereinafter referred to as the Prospectus) to the Registration Statement, containing the statements appearing on page 4 thereof that a request for postponement of the contemplated offering had been received on May 11, 1961 and that TWA "has not agreed to such a postponement".

This firm on the morning of May 18, 1961 received a copy of the preliminary prospectus dated May 16, 1961. This Prospectus was the latest information available to this firm at the time of the hearing before the Commission on the evening of May 18th. This firm knew that there had been filed Amendment No. 4. A request to counsel for TWA was made for a copy of said Amendment No. 4 which was rejected or, at least, not complied with prior to said hearing. During the course of May 18th this firm was informed that on that day TWA had also filed Amendment No. 5. All statements and positions taken by or on behalf of Toolco at the hearing and in this letter were and are based upon what appears in the Prospectus.

Up until 7 P.M. on May 19th, Mr. Davis had been continuously occupied on urgent matters on behalf of Toolco, including efforts relative to arrangements for an under-

writing syndicate to participate in a public distribution of Toolco's share of the TWA offering and, being the only individual of this firm familiar with all the [19152] facts, was not able to commence consideration of the statements appearing in this letter and to correct drafts prepared by his partners and associates until that time. This firm has not had an adequate opportunity to inquire into or investigate the facts set forth in the Prospectus or any omission to state material facts therein.

Prior to the hearing, Toolco's representative stated to Mr. Reed of Hughes, Hubbard, Blair & Reed, representing the Voting Trustees, that Toolco was prepared to offer to TWA to reimburse it for any expenses incurred by TWA caused by the postponement requested by Merrill Lynch, such as the reprinting of Warrants or other documents containing a date which would have to be changed. At the hearing before the Commission Mr. Davis, with authority from Toolco and Mr. Hughes, restated such offer. The offer was not accepted by TWA and instead counsel for TWA vigorously resisted the efforts of Toolco for a reasonable delay. It is not clear to this firm whether the ruling or decision by the Commission in refusing to grant the request of TWA for acceleration of its Registration Statement was conditioned upon the payment by Toolco to TWA of such expenses or whether Toolco is obligated to continue its offer for a particular period of time. In order to avoid [19153] any misunderstanding, Toolco hereby renews until 10 A.M. E.D.S.T. Monday, May 22, 1961, its offer to pay such expenses. Toolco will in any event pay such expense if the payment thereof is a requirement of the Commission. This firm as counsel for Toolco does not, however, recognize that the imposition of such a condition by the Commission would be proper. In that connection, Toolco hereby notifies TWA that it questions the reasonableness of the estimated $600,000 for expenses set forth in Part II of the Registration Statement.

Defendant's Exhibit 11-B.

This firm will use its best efforts to furnish TWA and the Commission all information available to it which it considers pertinent to the preparation of a corrective amendment to the Registraiton Statement. When a corrective amendment has been filed which in our opinion complies with the requirements of the Securities Act of 1933 and regulations promulgated thereunder by the Commission, we will advise our client Toolco to join in a request for acceleration, provided that by so doing Toolco's legal and equitable rights are not prejudiced. This firm reserves an unqualified right to advise its client to refuse to acquiesce in, or to object to, any [19154] Registration Statement filed by TWA which has not received the prior affirmative consent in writing of Toolco.

Mr. Davis, who is approving this letter, states that based upon every fact known to him to date, including conversations had with Mr. Howard Hughes and other representatives of Toolco, the position being taken by Toolco is not a device or an effort on the part of Toolco to interfere with the offering contemplated by TWA to its common stockholders. The positions being taken by Toolco in that regard are the direct result of advice given by Mr. Davis of this firm to Toolco since Monday, May 15th. Mr. Davis was authorized by Toolco to make each and every representation made by him at the aforesaid hearing. Each statement of fact made by Mr. Davis at the said hearing was true to the best of his knowledge and belief.

As previously indicated, Toolco is the owner of 78% of the outstanding common stock of TWA and this stock is currently in a voting trust. This firm is currently investigating the circumstances in which Toolco was required, coerced, compelled or induced to place this stock in such voting trust. We have tentatively reached the [19155] conclusion that this voting trust was required, in circumstances not yet fully determined, by certain lending insti-

tutions and that, notwithstanding the legal power to act vested in the voting trustees, such voting trustees are under a fiduciary obligation to the common stockholders, including Toolco as the beneficial owner of common stock, to carry out the purposes of said voting trust within its lawful scope. Based upon information available to us which is admittedly incomplete, it is a tentative conclusion of this firm that said voting trust, if lawful, was entered into for the limited purpose of securing or protecting the lending institutions. In that connection, it is our understanding of the provisions of the voting trust agreement and related documents that the lending institutions have the absolute right to remove two of the three voting trustees for any reason whatsoever, the third voting trustee being designated by Toolco.

Contractual commitments entered into between TWA and Toolco in the so-called 1960 financing obligate TWA to make the contemplated offering on or before May 31, 1961. Toolco obligated itself to subscribe to this offering, including any amount unsubscribed for by the public, up to $100,000,000, and retained the right to subscribe to the remaining $11,000,000 or thereabouts. It will be noted that [19156] the obligation of TWA to make this offering on or before May 31 is, as we understand it, pursuant to a contractual obligation between TWA and Toolco. It should be further noted that Toolco has the right and option to subscribe to this offering by tendering 6½% interim notes heretofore issued by TWA and presently owned by Toolco. It is the present belief of this firm that in the circumstances here present Toolco is not covered by the Commission's Rule 142. It is also the present belief of this firm that Toolco may be exposed to possible liabilities under the Securities Act of 1933 by reason of the provisions of Section 15 and Section 2(11) of said Act. It will be noted that TWA has not given and refuses to give Toolco any indem-

nification agreement against liability by reason of the statements or omissions in the Registration Statement.

Although legal representatives of TWA or of the voting trustees have indicated to Mr. Davis in a general way that TWA would cooperate with Toolco in the preparation of a registration statement in the future should Toolco delay its present plans to make a public distribution of the securities it is entitled to obtain under the contemplated offering by TWA to its common stockholders, it is out understanding that no contractual obligation exists in this regard. It was also indicated by such [19157] representatives that, in connection with the preparation by TWA of any such future registration statement for use in an offering of securities to be made by Toolco, an agreement of indemnity and indemnity bond would be required by TWA.

In order that TWA may commence promptly the necessary steps to correct what we believe to be material deficiencies in the Prospectus, we confirm the comments heretofore made to TWA and which were stated to the Commission on May 18. All interested parties must understand, however, that these comments do not purport to be complete. They represent all the comments which this firm is in a position to make within the time limitations imposed by the Commission based upon all the facts currently available to this firm.

Toolco, on advice of this firm, has not acquiesced to the request for acceleration of the effective date of the Registration Statement filed by TWA on May 17 or May 18. Counsel for TWA argued before the Commission that Toolco had deliberately delayed in presenting its objections to the Prospectus. Such an argument is, we believe, unwarranted. The preliminary Registration Statement filed by TWA on March 30, 1961 did not contain any reference to the purchase of Boeing aircraft or to a credit arrangement involving some $147,000,000. At that time Toolco had no

intention to [19158] make a public distribution of any securities of TWA. Moreover, Toolco was without counsel experienced in matters of this kind until this firm was retained on Monday, May 15, 1961.

In the circumstances hereinabove described, we reserve the right to modify, correct or supplement any of the statements of fact hereinafter set forth relating to existing deficiencies. Each and every statement of fact herein appearing is, however, in accord with the knowledge and information available to Mr. Davis of this firm after as much inquiry and investigation as to those facts as time would permit.

1. At page 22, under the heading "Voting Trust", the identity of the lending institutions which appointed and have the unlimited power to remove Mr. Breech and Mr. Olds as voting trustees should be disclosed, since such lending institutions are in control of said voting trustees who constitute a majority of the voting trustees. Moreover, at page 14, under the heading "Introduction of Jet Aircraft", the lending institutions negotiating with TWA with respect to the financing of approximately $147,000,000 should be identified. We understand that those lending institutions are identical with those controlling the voting trustees, with the exception of the addition of one insurance company which we believe to be [19159] The Prudential Insurance Company of America. It is our view that (a) the lending institutions controlling the voting trustees should be described as controlling persons or "parents" of TWA and (b) that current negotiations with respect to this financing of $147,000,000, believed to be in the form of a private placement, constitute self-dealing. In that connection Toolco is informed and believes that said lending institutions propose to include as a condition in said financing a provision that in the event the voting trust is termi-

nated, even in accordance with its terms, the repayment of said $147,000,000 will be accelerated and immediately become due and payable.

2. It is the position of Toolco that the Board of Directors of TWA are subservient to the majority voting trustees who are controlled by the lending institutions. It is the further contention of Toolco that the lending institutions are primarily interested in the repayment of an existing loan to TWA in the amount of approximately $165,000,000. It is the further position of Toolco that the lending institutions, the majority voting trustees, and a controlling majority of the present Board of Directors of TWA are disregarding the best interest of the owners of the beneficial interest in the Common Stock of TWA. The position of Toolco with respect to the above is currently under investigation by this firm. It is the [19160] belief of this firm that those presently in control of TWA may have conflicting interests in relation to the management of the affairs of TWA or that from time to time such conflicting interests may develop. We believe that the Prospectus should disclose the understahding of the majority Voting Trustees with respect to the nature and extent of their duties to the lending institutions having the power to remove them from office, and to the beneficial owners of TWA; and that it should disclose the basis of that understanding, and all pertinent instructions by the lending institutions to the majority Voting Trustees or by the Voting Trustees to the members of the Board of Directors controlled by the majority Voting Trustees.

3. Under the heading "Voting Trust," at page 22 of the Prospectus, the statement relating to the circumstances in which the Voting Trust terminates is inadequate in that it does not describe the right of Toolco to repay the lending

institutions and thereby to cause a termination of the Voting Trust.

4. At page 23 of the Prospectus there appears an excerpt from a statement by the Civil Aeronautics Board. This firm is not fully familiar with the proceeding in which such statement was made, except that we understand that it was in connection with the arrangements commonly described as the 1960 financing, nor have we had an [19161] opportunity to study the adequacy of the disclosure reflected by the excerpt of the statement of the Board. Apparently the excerpt quoted in the Prospectus is designed to indicate that the Board, under the Federal Aviation Act of 1958, would have to take appropriate action under that Act in connection with any reassumption of control by Toolco over TWA by reason of its stock ownership. The quoted excerpt from an opinion of the Board is made without any statement as to the position of the present management of TWA or of its counsel as to their opinion, if any, with respect to the right of Toolco to reacquire the right to vote the shares of Common Stock it beneficially owns.

If it is the view of TWA or of the Commission that it is material to disclose to the public the possibility or probability that the Voting Trust may terminate and Toolco reacquire the right to vote the shares of stock it beneficially owns, then a more complete statement of the facts and circumstances with respect to the creation of the Voting Trust would be appropriate. It is the position of Toolco that it was compelled to enter into the Voting Trust under conditions which would warrant a termination of the Voting Trust otherwise than in accordance with the terms of the arrangements under which it was created. This position of Toolco is presently under in- [19162] vestigation by this firm. The information available to this firm in that regard is presently considered to be inadequate for the expression of an opinion. It is noted, however, that the lending insti-

tutions involved required that Toolco pay a penalty of 22% should Toolco choose to avail itself of the right to repay the full amount of the principal and interest due to the lenders. This circumstance leads us to believe that the contention of Toolco warrants careful consideration.

5. At page 14 of the Prospectus a statement appears which fairly implies, if it does not specifically state, that TWA during 1960 obtained from jet operations the same percentage of operating revenue as did its competitors. At page 20 of the Prospectus, however, a statement appears to the effect that, during 1960 and in the first quarter of 1961, TWA's share of domestic passenger traffic declined solely by reason of an alleged delay in the delivery to TWA of Convair 880 jet aircraft. It is the opinion of Toolco, which seems to us to be justified, that the statement appearing at page 20 of the Prospectus is misleading in that it fails to recognize that there were factors responsible for the traffic decline there mentioned other than delays in the delivery of Convair 880's. If in fact this decline was due solely to delays in the delivery of Convair 880's, the public could be led to believe that [19163] the condition would be non-recurring. If, on the other hand, this decline were caused by other factors which could be recurring, the true nature of the factors causing a passenger traffic decline during 1960 and the first quarter of 1961 should be disclosed. The information with respect to the responsible factors is peculiarly within the possession of TWA.

6. Referring to paragraph 5 above, the nature and extent of the delays in delivery of aircraft referred to at pages 20 and 22 of the Prospectus should be disclosed. If the delays referred to therein did in fact cause a substantial passenger traffic decline, the investing public should be advised of the detailed facts so that it may evaluate the

possibility or probability of delays in delivery of the Boeing aircraft which the present management of TWA proposes to commit the Company to purchase, as described on page 14 of the Prospectus. Furthermore, as will be hereinafter indicated, the availability to TWA of Convair 990's and 880's through Toolco at dates earlier than deliveries of any Boeing aircraft is a material fact which should be disclosed.

7. Since a substantial number of Convair jet aircraft are available to TWA by reason of the efforts and commitments heretofore made by Toolco, the Prospectus [19164] should contain appropriate statements covering: (a) whether the present management of TWA intends to avail itself of the opportunity to acquire such Convair equipment; (b) whether the Boeing equipment to be acquired is in addition to or in lieu of the Convair equipment; (c) the probable delivery schedules of Convair equipment as compared with Boeing equipment. Information with respect to the above should be provided particularly in view of the statements now appearing in the Prospectus as to the materiality and effect of delays in the delivery of jet aircraft.

8. Mr. Holliday, a Voting Trustee and Director, and the representative of Toolco, refused to subscribe to the Registration Statement and withdrew the power of attorney given by him to the Chairman of the Board of TWA. This fact should be disclosed, together with the facts and circumstances relating to such withdrawal. We are informed that at the meeting of the Board of Directors of May 17, 1961 Mr. Holliday stated that on advice of counsel he would not assume responsibility and liability as a director for the statements and omissions in the Prospectus. It seems to us that the action of Mr. Holliday, a representative of Toolco, is a material fact to be disclosed.

Defendant's Exhibit 11-B.

9. Under the caption "Summary of Consolidated Operations" at pages 8-10, footnote J states that the [19165] maximum annual interest requirements on the Debentures will be $7,230,333.50. This footnote would convey the impression that the interest requirements of the Debentures together with other interest requirements on long term debt, which are shown as $4,000,000 in 1960 in the table on page 9, are substantially exceeded by operating revenues. It is the understanding of Toolco that the annual interest requirements on indebtedness senior to the Debentures, which is described in the capitalization table, aggregates in excess of $10,000,000 and that the aggregate interest requirements upon such indebtedness together with the contemplated Debentures will be approximately equal to or somewhat in excess of the operating profits for the year 1960. In that connection, it seems to us that it would be desirable, if not necessary, to indicate the probable interest obligation which may develop by reason of the financing program of approximately $147,000,000 now underway with the lending institutions in control of TWA relating to the Boeing purchase program.

10. Under the heading "Agreement with Hughes Tool Company Concerning $50,000,000 Revolving Credit", appearing at page 24 of the Prospectus, reference is made to an obligation of Toolco to provide TWA with a revolving [19166] credit of $50,000,000 through the last day of the month next following the month in which TWA takes delivery of and pays for the last of the 20 Convair 880's theretofore mentioned in the Prospectus. We do not find any statement disclosing the date or estimated date when this obligation is likely to terminate. We are advised by Toolco that it believes that its obligation under that revolving credit agreement is likely to terminate on or

before September, 1961. This termination date is dependent upon a delivery schedule best known to Convair. Toolco does not know what inquiry, if any, has been made by TWA of Convair with respect to such schedule. In view of the inportance of this matter by reason of the amount involved, it seems to us that TWA should determine and disclose the probable termination date of this revolving credit.

11. Under the heading "Remuneration" the Prospectus discloses an employment contract with Mr. Tillinghast. Toolco objects to the terms of that employment contract and hereby notifies TWA that it has requested us to consider the possibility of action with respect to it. Toolco questions the necessity for entering into such a long-term contract in order to obtain the services of an adequate chief executive, and questions the propriety of action by the lending institutions, the majority Voting Trustees and the controlling [19167] members of the Board of Directors, elected by the majority Voting Trustees, to impose upon TWA such long-term obligations surviving the termination of the voting trust. We have not had an opportunity to consider the merits of these matters. Toolco further believes, and we concur, that the Prospectus should disclose any relationships or business dealings which may have previously existed between Mr. Tillinghast and any of the lending institutions or the majority Voting Trustees or corporations controlled by either of them.

12. With respect to the heading "Litigation" appearing on page 38 of the Prospectus, Toolco hereby notifies TWA that it is contemplating, and that this firm is investigating, the possibility of commencing an action, as the beneficial owner of approximately 78% of the Common Stock of TWA, against (a) the lending institutions controlling TWA, (b)

the majority Voting Trustees, and (c) the individual directors controlled by the majority Voting Trustees. Toolco is also contemplating, and this firm is investigating, the commencement of an action against the lending institutions relating to the terms and conditions imposed upon TWA and Toolco in connection with the 1960 financing and other matters which may affect the validity of the existing voting trust. Toolco has also requested [19168] this firm to investigate the possibility of enjoining the consummation of the Boeing purchase transaction described at page 14 of the Prospectus; or of taking action on behalf of TWA against the persons responsible for any commitments incurred or damage suffered by TWA in connection with such program, on the ground that such program (a) is contrary to the best interest of the stockholders of TWA, (b) has been promoted for the benefit of certain lending institutions, and (c) has been promoted for the purpose of interfering with the ability of TWA to discharge the indebtedness incurred in connection with the 1960 financing program and thereby to terminate the voting trust pursuant to its terms. This firm is not in a position at this time to disclose the information it has obtained to date. It is our view, however, that the very existence of such claims is of sufficient materiality to be required to be disclosed in the Prospectus.

In view of the limited period of time allowed to counsel for Toolco in the preparation of this letter, the above may not be assumed to be a full or complete description of the nature of the claims which Toolco may assert. The above is stated primarily for the purpose of advising the interested parties as well as the Commission that Toolco has disclosed to us within the past few days material information which justifies careful consideration by this firm as to the existence of meritorious claims of the nature indicated.

[19169] 13. Throughout the relationship between Toolco and TWA prior to the establishment of the voting trust it

was the practice of Toolco to investigate the need of TWA for and place orders for modern types of equipment for the ultimate use and benefit of TWA. At the present time, Toolco has on order 17 Convair jet aircraft, of which 13 are Convair 990's to be delivered on schedules comparable to scheduled deliveries to American Airlines, Inc., one of TWA's major competitors. Negotiations are in progress between TWA and Toolco for the acquisition by TWA of four Convair 880's on order by Toolco, but such negotiations are not disclosed in the Prospectus. With respect to the Convair 990's Toolco believes that these aircraft will be superior in speed and adaptibility to other available jet aircraft, including Boeing equipment proposed to be purchased by TWA, and will therefore be better suited to the needs and requirements of TWA than such Boeing equipment. Furthermore, the Convair equipment could be delivered to TWA and placed in service and effective utilization ahead of such Boeing equipment. Based upon information made available to us by Toolco, it appears that there may be a basis upon which TWA may assert an equitable right to the Convair equipment on order by Toolco; information made available to us by Toolco in this regard may not be disclosed at this time to the extent requested by the Commission, because a disclosure at this time of the [19170] information made available to us, without further investigation on our part, could be prejudicial to the interests of our client. The existence of such a right would be a material fact because of the definite advantage which would flow to TWA should TWA request and receive such equipment from Toolco. It also appears that the Convair equipment was ordered by Toolco with full knowledge on the part of operating personnel of TWA. Accordingly, TWA should state in the Registration Statement whether or not it claims such a right and whether or not it intends to ask Toolco to make such equipment available to it. Toolco

is satisfied that TWA has known for some time that the Convair equipment was available to it and hereby confirms to TWA that all or part of such equipment is available to it to the extent that the same may be needed by TWA. An unresolved question exists whether TWA is obligated to purchase such Convair equipment from Toolco at approximately its cost plus interest on invested funds. Toolco has requested this firm to review the pertinent facts and to advise as to the existence of such an obligation. We have not had an opportunity to commence the investigation so requested. The aggregate ultimate cost of the Convair equipment on order by Toolco is in excess of $75,000,000, and it is the position of Toolco that the possible existence of such an obligation on TWA should be disclosed in any registration statement to which Toolco [19171] may acquiesce. In addition, it should be stated in the Registration Statement whether or not the Boeing equipment recently ordered by TWA would be required or could be effectively utilized in the event that TWA is found to be obligated to purchase from Toolco the Convair equipment on order by it.

Very truly yours,

SIMPSON THACHER & BARTLETT

/s/ CHESTER C. DAVIS

by Chester C. Davis

Defendant's Exhibit 11-C.

[19173]

CHESTER C. DAVIS
120 BROADWAY
NEW YORK 5, N. Y.

May 24, 1961

Attention of Ronald Duckworth, Secretary

Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, N. Y.

Dear Sirs:

In connection with our investigation of the matters set forth in the letter to you and the Securities and Exchange Commission dated May 19, 1961, we wish to obtain from you the following documents:

1. A copy of the Company's Certificate of Incorporation;
2. A copy of the Company's By-Laws;
3. A copy of all Minutes of all meetings of the Board of Directors since the institution of the Voting Trust Agreement;
4. Copies of all reports presented to the Directors or circulated at meetings of the Board.

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

A-894

Defendant's Exhibit 11-D.

[19174]

ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

May 25, 1961

Re: Registration Statement of Trans World Airlines, Inc. (Registration No. 2-17847)

Attention of Mr. Ralph C. Hocker

Securities and Exchange Commission
Washington 25, D. C.

Dear Sirs:

This will confirm my telephone conversation with Mr. Hocker yesterday afternoon with respect to the above Registration Statement of Trans World Airlines, Inc.

As I told Mr. Hocker, my client, Hughes Tool Company, disclaims any liability or responsibility with respect to said Registration Statement or any statements which appear therein, or omissions therefrom. Said Registration Statement was prepared without consultation with or approval by Hughes Tool Company or its counsel. Furthermore, Hughes Tool Company has not acquiesced in, nor does it acquiesce in, the acceleration of the effective date of said Registration Statement. However, based upon a limited review of Amendment No. 6 thereto, and Amendment No. 7 which was received by me late yesterday afternoon, Hughes Tool Company has no desire to delay appropriate action by the Securities and Exchange Commission, in the [19175] circumstances, making said Registration Statement effective. At the time I called Mr. Hocker, I had no information that the Commission had either already acted or was about to act with respect to said Registration Statement.

Defendant's Exhibit 11-D.

I also pointed out to Mr. Hocker that the statement appearing on page 25 of Amendment No. 6 to the effect that the delivery of the last of the Convair 880s was presently expected to occur by late summer of 1961, was substantially in accord with the latest information available to me from Hughes Tool Company as to its understanding, and was in accord with the information set forth in the letter of May 19, 1961. This information, however, and the understanding of Hughes Tool Company in that regard, is not based on recent information received from Convair. I advised Mr. Hocker that it should be understood by all concerned that although Hughes Tool Company does not question the accuracy of the statement made by Trans World Airlines, Inc. in that regard, such statement may not be based properly on anything stated in the May 19 letter.

I also pointed out to Mr. Hocker that the material appearing under the caption "Voting Trust" may not completely reveal the extent to which the two insurance companies named have been, and presumably continue to be, in control of the [19176] voting trustees, because the facts necessary for an intelligent application of the provisions of paragraph 3 of the Noteholders' Agreement dated as of December 1, 1960 are not, I believe, disclosed. I also stated to Mr. Hocker that the above comments were only for the guidance of the Commission and its staff. At the conclusion of our telephone conversation, I inquired if it was appropriate to be informed as to the current status of the Registration Statement, because I had received no information from TWA with respect thereto. Mr. Hocker then informed me that the Registration Statement either had become effective or was about to become effective at 5:30 p.m. of that day, May 24, 1961.

I am sending a copy of this letter to Trans World Airlines, Inc. attention of Mr. Charles C. Tillinghast, Jr., President, and to its counsel, Messrs. Chadbourne, Parke, White-

side & Wolff, and to Messrs. Hughes, Hubbard, Blair & Reed, counsel for the Voting Trustees, for their respective information.

Very truly yours,

CHESTER C. DAVIS
Chester C. Davis

Defendant's Exhibit 11-E.

[19177]

ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

BY HAND

May 25, 1961

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Attention of Mr. Charles C. Tillinghast, Jr.
President

Dear Sirs:

On behalf of the Hughes Tool Company, we request that there be made available to us, not later than the close of business on Friday, May 26, 1961, all papers relating to the proposed additional financing by Trans World Airlines, Inc., in the amount of $147 million referred to on page 14 of its Prospectus. We particularly request drafts of any loan agreements or other documents relating to this financing.

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

Defendant's Exhibit 11-E.

[19178]

ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

BY HAND

May 25, 1961

Attention of Mr. Charles C. Tillinghast, Jr.
President

Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, New York.

Dear Sirs:

On behalf of the Hughes Tool Company, we request that the following information with respect to the proposed purchase of Boeing aircraft by Trans World Airlines, Inc. (TWA), as described at page 11 of TWA's Prospectus, be furnished to us immediately by telephone or telegraph:

1. Has TWA received from Boeing Airplane Company an extension of the time within which to make arrangements for the financing of the purchase of such aircraft?

2. Has TWA requested any such extension of time and, if so, what response, if any, has been received from Boeing Aircraft Company?

3. Does TWA presently intend to request such an extension of time prior to May 31, 1961?

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

A-899

Defendant's Exhibit 11-F.

[19179]

CHESTER C. DAVIS
Room 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

WORTH 2-5220

May 26, 1961

To: Irving Trust Company as Agent for the
Holders of the Equipment Notes of
Trans World Airlines, Inc.

The Equitable Life Assurance Society
of the United States

Attention: James F. Oates, Jr.,
Chairman and President

Metropolitan Life Insurance Company

Attention: Frederic W. Ecker,
Chairman

The Board of Directors of Trans World
Airlines, Inc.

Mr. Ernest R. Breech
Mr. Irving S. Olds
Mr. Raymond M. Holliday,
Voting Trustees.

Dear Sirs:

This letter is to confirm and supplement certain positions stated on behalf of Hughes Tool Company ("Toolco") in the letter of May 19, 1961 to Trans World

Airlines, Inc. ("TWA"), a copy of which is enclosed herewith.

It is the desire of Toolco to confer with you or your representative as soon as possible with the objective of working out an amicable solution wherever [19180] there may be a difference of opinion.

At the outset it is the position of Toolco that its title record of ownership of more than 78% of the outstanding common stock of TWA was put in a voting trust at the insistence of certain lending institutions and with the acquiescence of Toolco in order to assist the financing program of TWA and for the limited purpose of assuring the lending institutions the repayment in accordance with their terms of certain notes of TWA to be acquired by such lending institutions.

It is therefore the position of Toolco that the voting trust and related agreements are proper and lawful only when construed within the limits hereinabove described. It was not the purpose or intention of Toolco in placing its stock in a voting trust to confer upon others the unrestricted right to deal with the property interests of Toolco represented by its ownership of TWA.

Under paragraph 3 of the Noteholders' Agreement, the lending institutions holding the majority of said notes have the absolute right for any reason whatsoever to remove two of the three voting trustees and to select their successors, and thus have absolute control over such voting trustees and TWA. It is my understanding that at the present time two insurance companies, namely, Metropolitan Life Insurance Company and Equitable Life [19181] Assurance Society of the United States, own a majority of said notes and that they therefore have such absolute control. It would seem obvious that the lending institutions represent an interest different from, and at times adverse to, the interest of the owners.

Defendant's Exhibit 11-F.

The voting trustees, as I understand it, have elected a majority of the present directors of TWA who are removable without cause under the by-laws of TWA at the will of a majority of the stockholders of TWA. In the circumstances here present, therefore, the present Board of Directors is biddable and subservient to the voting trustees who, in turn, are biddable and subservient to the lending institutions and to the direction of Irving Trust Company as the agent of the lending institutions.

It is the position of Toolco that the present directors of TWA are confronted with the necessity of attempting to serve two masters, namely, the owners of TWA and the interest of the lending institutions; and that, in fact, since the voting trust has been established, the Board of Directors has ignored the interest of the owners and has been entirely subservient to the will and wishes of the voting trustees. It is the further position of Toolco that the normal concept that a Board of Directors may act in accordance with its independent [19182] judgment is not applicable to preclude the need for consultation in the instant situation and that the concept must be applied in such way as to do equity among the interested parties.

Toolco recognizes that the present Board of Directors of TWA has a duty or obligation to the lending institutions with respect to matters which may have an effect on the repayment of the notes held by them; at the same time, it is the position of Toolco that the lending institutions, the voting trustees, and the directors, also have a fiduciary duty and obligation to be responsive to the interests of the owners of TWA, including Toolco which continues to be the owner of more than 78% of TWA. In the circumstances here present, Toolco, in equity, would seem to be entitled to be consulted on business decisions which vitally affect its ownership interest in TWA because normally the directors would be responsive to its ownership interest. Toolco,

is of course also mindful of the minority ownership which has interests, similar to those of Toolco, also requiring protection. In this connection, Toolco believes that with respect to any matter which involves any dealings between TWA and the lending institutions, the directors and voting trustees have a duty and obligation to consult with [19183] and obtain the approval of the owners.

Based upon facts presently known to me, it would seem that the lending institutions, the voting trustees and the directors of TWA, have followed a course of conduct not in accordance with the principles above stated. This is particularly troublesome when decisions are made which are likely to impose on TWA obligations beyond the term of the voting trust. For the purposes of this letter, the term of the voting trust means any time when the voting trust may terminate in accordance with its terms.

In connection with the request for an opportunity to confer with appropriate representatives of the lending institutions, the voting trustees and the individual directors of TWA, you may assume that the representative of Toolco participating in such discussion will be duly authorized and empowered to work out a settlement of the particular problems hereinafter outlined.

Among the specific areas as to which Toolco is primarily concerned at this time, and which it would like to discuss with you or your representatives, are the following:

1. The arrangement with Boeing Airplane Company ("Boeing") for the acquisition by TWA of twenty Boeing 707-131B and six 707-331B jet aircraft. Toolco [19184] strenuously objects to any such commitment by TWA for several reasons, all of which may not be set forth in this letter. Basically, Toolco does not believe that such equipment is best suited to the needs of TWA, particularly when TWA may acquire jet aircraft from Convair pursuant to arrangements heretofore made by Toolco for the benefit of

TWA. Toolco does not understand how the Board of Directors may justify saddling TWA with long-term obligations or equipment contrary to the wishes of the owners of TWA, particularly when such equipment and obligations undoubtedly will extend beyond the terms of the Voting Trust.

The financing program contemplated between TWA and the lending institutions constitutes self-dealing and Toolco objects to the consummation of any such arrangement without its consent. Furthermore, it would seem that the financing program contemplated by TWA would adversely affect the ability of TWA to repay at the earliest possible date the aforementioned notes and thereby terminate the voting trust arrangement. Toolco believes that the equipment available to TWA from Convair is not only more suitable to the needs of TWA than the proposed Boeing equipment but would be more competitive with the equipment to be used by its principal competitors, [19185] and that the Convair equipment would be available to TWA at an earlier date than the Boeing equipment. The current Prospectus of TWA emphasizes the economic advantages of having jet equipment available to it at the earliest possible date.

Toolco has not been consulted with respect to the proposed Boeing commitment and does not appear to have information at this time as to the current plans of TWA. One of the purposes of this letter is to put all of you on notice that Toolco intends to take all action available to it to avoid the irreparable injury which would be caused by consummation of the program disclosed in the current Prospectus relating to the purchase of Boeing equipment and that Toolco, if such program is consummated, will have no alternative but to seek to hold responsible all persons, individual or corporate, who have participated in or controlled the course of conduct followed by TWA.

Toolco hereby requests that you immediately advise the

undersigned as to the status of the program described in the current Prospectus relating to the purchase of Boeing equipment and as to the current negotiations with the lending institutions so that Toolco may have an adequate opportunity to review the same [19186] before they are consummated. In that connection, Toolco hereby requests that the undersigned be furnished with copies of all pertinent documents.

Toolco understands that if the Boeing transaction is not consummated, TWA may lose as a penalty the sum of $850,000 heretofore paid by TWA to Boeing. Even though Toolco was not consulted prior to any commitment between TWA and Boeing, the undersigned or another representative of Toolco, in any discussion which may be held pursuant to the suggestion hereinabove made, will be authorized to discuss the proper allocation of any expense incurred, including any penalty which TWA may incur by reason of the termination of the proposed Boeing commitment.

2. Independently of the outcome of the proposed Boeing purchase, another matter which requires discussion is the 17 Convair jet aircraft which Toolco has contracted to purchase and the rights or obligations of Toolco and TWA with respect thereto.

3. Toolco does not question the background, personal integrity or ability of Mr. Charles Tillinghast, who has been employed as President of TWA under a long-term contract. Toolco, nevertheless, objects to any arrangement which has the effect of imposing on TWA an [19187] obligation which extends beyond the term of the voting trust, including an arrangement for the services of a chief executive who is not acceptable to Toolco as the owner of more than 78% of the common stock of TWA. Toolco recognizes that in the discharge of their obligations to the lending institutions, the voting trustees and the directors have the responsibility for obtaining the services of a competent chief

executive. The position of Toolco is simply that the lending institutions, the voting trustees and the Board of Directors do not have the right to impose the long-term obligation, reflected by the employment contract with Mr. Tillinghast, without the approval or consent of the owners of TWA.

4. The failure of the Board of Directors of TWA to submit to the stockholders of TWA the merger negotiated between TWA and Northeast Airlines, Inc. (hereinafter "Northeast") is another matter of concern to Toolco. Prior to the creation of the voting trust, the management of TWA, with the approval of the majority of the owners of TWA, considered such a merger to be in the best interests of TWA. The lending institutions, the voting trustees and the Board of Directors permitted this agreement of merger to lapse without submitting the matter to the owners of TWA and without consulting Toolco. [19188] It is difficult to see how the lending institutions would have been adversely affected by such a merger since the notes held by them constitute a senior indebtedness of TWA. Toolco recognizes that the new Board of Directors and a new chief executive of TWA may not have the same business judgment as the prior management of TWA. Since the present Board of Directors of TWA is responsible to two masters who may have different interests, it would seem that the proper course of action would have been to submit the matter for appropriate action or direction by the owners of TWA. Toolco understands that unless immediate action is taken the opportunity to merge with Northeast may be lost forever. You are, therefore, requested to take immediate action to reinstitute discussions with Northeast looking toward such a merger, so as to minimize the possible irreparable injury which will be suffered by TWA should this opportunity be lost.

In the event that it is the position of the lending institu-

tions or the voting trustees or the Board of Directors that a merger with Northeast would impose a financial burden upon TWA, adversely affecting the position of the lending institutions, it is the position of Toolco that it is prepared to discuss the possibility of assuming any such financial risk.

[19189] The letter of May 19, 1961, addressed to TWA and the Securities and Exchange Commission is enclosed for your further information with respect to other positions taken by Toolco which are not mentioned herein but which are hereby reconfirmed. A letter was delivered by hand this morning, Friday, May 26, to TWA and its counsel Messrs. Chadbourne, Parke, Whiteside & Wolff, and to the voting trustees at the office of TWA, and to their counsel Messrs. Hughes, Hubbard, Blair & Reed, requesting information as to whether TWA has received from Boeing an extension of time within which to make arrangements for the financing of the contemplated purchase of equipment from it; whether TWA has requested any such extension of time, and if so, what response, if any, has been received from Boeing and whether TWA intends to request such an extension of time prior to May 31, 1961. It is respectfully requested that the undersigned be advised with respect to the queries set forth in said letter as soon as possible and not later than Monday noon, May 29.

The undersigned, together with other representatives of Toolco, will hold themselves available to meet with you at all convenient times.

[19190] A copy of this letter is being forwarded to Messrs. Chadbourne, Parke, Whiteside & Wolff, counsel for TWA, and to Messrs. Hughes, Hubbard, Blair & Reed, counsel for the voting trustees, for their respective information.

Very truly yours,

CHESTER C. DAVIS
Chester C. Davis

A-907

Defendant's Exhibit 11-G.

[19191]

[WESTERN UNION TELEGRAM]

COPY — HAND DELIVERY TO MR. TILLINGHAST MAY 31, 1961

FAST WIRE

BOEING COMPANY
SEATTLE, WASHINGTON
and
BOEING COMPANY
45 ROCKEFELLER PLAZA, NEW YORK

REFERRING TO LETTER DATED MAY 25 ON BEHALF OF HUGHES TOOL COMPANY, THIS IS TO NOTIFY YOU THAT AS BENEFICIAL OWNER OF MORE THAN 78% OF THE OUTSTANDING COMMON STOCK OF TWA HUGHES TOOL COMPANY DISPUTES THE POWER AND AUTHORITY OF THE BOARD OF DIRECTORS OR THE MANAGEMENT OF TWA TO ENTER INTO, COMMIT ITSELF FOR OR CONSUMMATE THE PURCHASE OF JET AIRCRAFT FROM YOU PURSUANT TO THE AGREEMENTS DATED APRIL 30, 1961 OR OTHERWISE, OR TO ENTER INTO, COMMIT ITSELF FOR OR CONSUMMATE THE FINANCING ARRANGEMENTS CONTEMPLATED BY SAID AGREEMENTS. THE PRESENT BOARD OF DIRECTORS OF TWA AND MANAGEMENT OF TWA ARE CURRENTLY UNDER THE DIRECTION AND CONTROL AND ARE SUBSERVIENT TO CERTAIN LENDING INSTITUTIONS AND THEIR INTEREST, AND TO VOTING TRUSTEES SUBJECT TO CONTROL BY SAID LENDING INSTITUTIONS. SAID BOARD OF DIRECTORS AND MANAGEMENT OF TWA ARE NOT RESPONSIVE TO THE WISHES AND DESIRES OF THE OWNERS OF TWA AND ARE NOT CONCERNED SOLELY WITH THE BEST INTERESTS OF TWA. THE VOTING TRUST AGREEMENT IS SUBJECT TO TERMINATION PURSUANT TO ITS TERMS AT ANY TIME THAT NOTES HELD BY SAID LENDING INSTITUTIONS ARE PAID IN FULL, AT WHICH TIME TWA WILL REVERT TO THE CONTROL OF THE OWNERS OF TWA. THE AGREEMENTS AND FINANCING ABOVE MENTIONED WOULD IMPOSE OBLIGATIONS ON TWA BEYOND THE TERM OF SAID VOTING TRUST AND WOULD TEND TO PREVENT OR DELAY THE TERMINATION OF SAID VOTING TRUST, ADVERSELY AFFECTING THE OWNERS OF TWA. YOU ARE HEREBY NOTIFIED [19192] THAT ANY CONTRACT OR COMMITMENT FOR THE PURCHASE OF JET EQUIPMENT FROM YOU BY TWA SHOULD NOT BE CONSUMMATED OR IMPLEMENTED WITHOUT APPROVAL BY THE OWNERS OF TWA AND THAT YOU WILL BE PROCEEDING AT YOUR OWN RISK IF YOU PARTICIPATE IN IM-

Defendant's Exhibit 11-G.

POSING THE OBLIGATIONS CONTEMPLATED BY SAID AGREEMENTS AND RELATED FINANCING ON TWA. THE CURRENTLY PROPOSED FINANCING BY TWA INVOLVES UNJUSTIFIABLE SELF DEALING BY THE LENDING INSTITUTIONS NOW CONTROLLING TWA. YOU ARE HEREBY FURTHER REQUESTED NOT TO APPROVE, RATIFY OR CONSENT TO ANY PROPOSED FINANCING ARRANGEMENT WITH THE LENDING INSTITUTIONS CURRENTLY HAVING THE POWER TO CONTROL TWA OR ANY OTHER FINANCING WHICH INVOLVES, DIRECTLY OR INDIRECTLY, SELF DEALING, WITHOUT THE CONSENT OF THE OWNERS OF TWA. AS A SUBORDINATED CREDITOR OF TWA, HUGHES TOOL COMPANY ALSO OBJECTS TO THE IMPOSITION OF SENIOR INDEBTEDNESS AS CONTEMPLATED BY THE PROPOSED FINANCING RELATING TO SAID AGREEMENTS. WE ARE ADVISED BY TWA THAT NO AGREEMENT CONCERNING THE PROPOSED FINANCING HAS YET BEEN EXECUTED AND THAT TWA HAS NOT YET DETERMINED WHETHER OR NOT TO REQUEST AN EXTENSION OF CERTAIN DATES CONTAINED IN THE SAID AGREEMENTS. YOU ARE HEREBY REQUESTED TO NOTIFY CHESTER C. DAVIS OF 120 BROADWAY, NEW YORK, OUR COUNSEL, BEFORE YOU APPROVE OF ANY FINANCING ARRANGEMENT SUBMITTED TO YOU BY TWA PURSUANT TO THE PROVISIONS OF SAID AGREEMENTS SO THAT HE MAY TAKE APPROPRIATE ACTION TO PROTECT OUR INTERESTS.

HUGHES TOOL COMPANY

BY RAYMOND M. HOLLIDAY

Defendant's Exhibit 11-H.

[19193]

HUGHES TOOL COMPANY

EXECUTIVE OFFICES
TWENTY-SECOND FLOOR GULF BUILDING
HOUSTON 2, TEXAS

Raymond M. Holliday
Vice President

May 31, 1961

BY HAND

Charles C. Tillinghast, Jr., Esq., President,
Trans World Airlines, Inc.,
380 Madison Avenue,
New York, New York.

Dear Sir:

This will confirm our telegram sent early this afternoon in response to your night letter telegram of May 29th and your letter of the same date which we received this morning. As we stated in our telegram we do have information, some of which has been recently developed, of which you have not been informed and which should be considered by the Board of Directors of TWA, in the interest of all the stockholders of TWA and others interested in its best management, concerning the relative superiority of the Convair aircraft for the operating needs of TWA and the advantages, including advantages with respect to financing, which would result from its acquisition of available Convair aircraft, based upon information and proposals to be presented to you.

Immediately upon the receipt of your letter we took steps to have the information which you requested for-

warded to us in New York. Much of that information is in the several [19194] offices of Hughes Tool Company, including the California office. Moreover, until we have received the material requested in our telegram we will not be in a position to present all relevant information as we have no way of knowing what information you have already received. Accordingly your suggestion of today that this information be delivered to you this afternoon was completely unreasonable and your insistence in that regard can only be interpreted as an indication that your letter of May 29th was not written in good faith.

We expect to present relevant information to you not later than Friday June 2nd and will be in touch with you to arrange for an appropriate meeting, assuming of course that you are still willing to carry out the intentions expressed in your letter to me dated May 29, 1961.

Very truly yours,

RAYMOND M. HOLLIDAY

A-911

Defendant's Exhibit 11-I.

[19195]

COPY TELEGRAM DATED JUNE 1, 1961 10:42 P.M.

TO: C. S. ROWE OF CHADBOURNE PARKE

REFERRING TO HUGHES TOOL COMPANY LETTER AND TELEGRAM OF MAY 31, 1961, TO MR. TILLINGHAST PRESIDENT OF TWA THIS IS TO REQUEST THAT YOU ADVISE MR. TILLINGHAST THAT I WILL BE PREPARED BY 2 P.M. TOMORROW JUNE 2, 1961, TO PRESENT TO HIM AND SUCH MEMBERS OF THE EXECUTIVE COMMITTEE OF TWA AND OF ITS BOARD OF DIRECTORS AS HE BELIEVES SHOULD BE PRESENT. INFORMATION RELATING TO THE REQUEST MADE IN HIS MAY 29, 1961, LETTER TO MR. HOLLIDAY. BECAUSE OF THE IMPORTANCE OF THE MATTER TO THE VARIOUS INTERESTED PARTIES AND IN VIEW OF THE APPARENT DECISION ANNOUNCED BY MR. TILLINGHAST, HUGHES TOOL CO. REQUESTS THAT MR. BREECH AND MR. OLDS AS VOTING TRUSTEES BE PRESENT AT THE TIME THIS INFORMATION BE PRESENTED. ACCORDINGLY, I AM SENDING A COPY OF THIS TELEGRAM TO THEIR COUNSEL, MR. REED, AND I AM ALSO SENDING COPIES TO MR. BREECH AND MR. OLDS. I WOULD APPRECIATE IT IF YOU WOULD ADVISE ME AS SOON AS POSSIBLE IF 2 P.M. TOMORROW IS CONVENIENT FOR SUCH PERSONS TO BE PRESENT. IF SUCH TIME IS INCONVENIENT PLEASE ADVISE ME THE EARLIEST DATE AND TIME CONVENIENT TO ALL CONCERNED.

SIGNED: HUGHES TOOL CO.

BY: CHESTER C. DAVIS

RECEIVED 8:45 AM

Defendant's Exhibit 11-J.

[19196]

[Western Union Telegram]

UDA026 UD-NA059
LONG RX PD NEW YORK NY 2 1256A EDT
CHARLES C TILLINGHAST JR. PRESIDENT TRANS WORLD AIRLINES INC
380 MADISON AVE DELR 19TH FLR RECEPTION DESK NYK

REFERRING TO YOUR LETTER OF MAY 29, 1961 TO ME IN WHICH YOU REQUESTED CERTAIN INFORMATION FROM HUGHES TOOL COMPANY AND TO THE PUBLIC ANNOUNCEMENTS ATTRIBUTED TO YOU TO THE EFFECT THAT TWA HAD ARRANGED FINANCING FOR THE PURCHASE OF BOEING EQUIPMENT AND HAD COMMITTED ITSELF TO THE PURCHASE OF SUCH EQUIPMENT, I, AS A DIRECTOR OF TWA, REQUEST THAT YOU NOTIFY ME AT ROOM 2628 WALDORF TOWERS, IMMEDIATELY, AND I ANY VENT BEFORE 2:00 P.M. JUNE 2, 1961, OF THE EXACT STATUS OF SAID FINANCING AND OF THE COMMITMENTS, IF ANY, TO BOEING FOR THE PURCHASE OF EQUIPMENT. I FURTHER REQUEST THAT I BE ADVISED IMMEDIATELY OF ANY CHANGE IN THE STATUS OF SAID FINANCING OR COMMITMENT TO PURCHASE. I AM SENDING A COPY OF THIS TELEGRAM TO MR. CARL ROWE COUNSEL TO TWA AND TO MR. FRANCIS C. REED COUNSEL TO THE VOTING TRUSTEES FOR THE INFORMATION OF HIS CLIENTS

RAYMOND M HOLLIDAY

29 1961 2628 2:00 2 1961.

A-913

Defendant's Exhibit 11-K.

[19197]

CHESTER C. DAVIS
ROOM 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

BY HAND

June 4, 1961

Re Hughes Tool Company—TWA

Carl Rowe, Esq.
Chadbourne, Parke, Whiteside & Wolff
25 Broadway
New York, N. Y.

Dear Mr. Rowe:

There are enclosed two copies of transcription of notes taken on my behalf of the conference which we had Friday afternoon, which I have hastily reviewed and which seem to me fairly present the substance of the material I presented at such conference. Undoubtedly, some of the items identified by me in that conference deserve further consideration. I must emphasize that I have been able to present only the material which could be assembled in a very short period of time following Mr. Tillinghast's letter of May 29. I am asking other officers of Hughes Tool Company to review the enclosed notes of our conference. I am prepared to obtain such facts or data as you may need to

confirm the statements made by me on behalf of Hughes Tool Company relating to the desirability of Convair equipment for the needs of TWA.

[19198] Notwithstanding your statement that TWA has not exercised its right to an "out" from the Boeing commitment, I understood Mr. Tillinghast to say that consideration could still be given to Convair equipment, including the thirteen 990s on order by Hughes Tool Company, provided that certain conditions were promptly met. I am considerably disturbed at the suggestion of a penalty bond, because I understand that it is a most unusual request. It seems to me that we should be able to satisfy TWA and ourselves as to the delivery schedules of Convair equipment based upon a firm commitment by Convair as to its ability to meet a particular delivery schedule. It seems to me, therefore, that we should promptly arrange for a meeting with qualified representatives of Convair to discuss this matter.

Insofar as the terms on which the thirteen 990s on order by Hughes Tool Company are available to TWA, it is relatively easy to prepare such a tender in writing insofar as it relates to the overall price of such equipment, and progress payments, heretofore made or payable in the future, pursuant to the terms of the contract between Hughes Tool Company and Convair. It may be, however, that Mr. Tillinghast had in mind a proposal relating to a financing program by TWA. As previously indicated, I assume that the lending institutions with which TWA has been dealing in connection with the financing of the Boeing equipment would be [19199] equally available to TWA for the financing of the Convair equipment. It would be most disturbing indeed if it were otherwise. At the same time, as previously indicated to you and others, Hughes Tool Company by reason of its investment in TWA and its interest in the voting trust which it entered into in 1960 so as to enable

TWA to obtain financing at that time, has a substantial interest to protect in connection with any proposed financing program by TWA. Therefore, in order to expedite matters as much as possible, you are hereby requested to submit to me or to Mr. Holliday immediately the detailed terms of the financing currently being negotiated by TWA with certain lending institutions.

I am sending a copy of this letter and enclosures to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the voting trustees, so that he and his clients may likewise consider the above, as well as the subjects of the conference held Friday afternoon.

Very truly yours,

CHESTER C. DAVIS

Enclosures

A-916

Defendant's Exhibit 11-L.

[19200]

COPY

[LETTERHEAD OF]

CHESTER C. DAVIS
ROOM 3113
120 BROADWAY
NEW YORK 5

June 4, 1961

BY HAND

Irving S. Olds, Esq.
14 Wall Street
New York 5, N. Y.

Dear Mr. Olds:

This refers to your letter to me of June 2, 1961. The views and objections of Hughes Tool Company relating to the Boeing purchases program by TWA go beyond a mere comparison of the types of aircraft manufactured by Boeing and Convair, and the preference of Hughes Tool Company for Convair jet equipment. The transactions described in the current prospectus of TWA, if consummated, would have serious long term economic consequences to TWA and to Hughes Tool Company. Notwithstanding an immediate response to the May 29 letter of Mr. Tillinghast, there appeared a public announcement on Thursday, June 1, attributed to Mr. Tillinghast, indicating that a decision had been made by the management of TWA committing it to the Boeing purchases program. For that reason, I requested on behalf of Hughes Tool Company, an

opportunity to present our views to you and Mr. Breech as voting trustees, so that you could consider exercising the legal rights vested in you as voting trustees for the protection of the beneficial interest of Hughes Tool Company.

[19201] At the present time, Hughes Tool Company, having put its ownership interest in TWA in a voting trust for the purpose of assisting TWA to consummate the 1960 financing, is dependent upon action by the voting trustees and the exercise of their legal powers as voting trustees for the protection of its ownership interest in TWA.

You may consider this letter as a request by Hughes Tool Company for a meeting at the earliest possible moment with you and Mr. Breech, so that you may consider the request of Hughes Tool Company that the voting trustees take appropriate action and exercise the powers vested in them for the protection of Hughes Tool Company. In that connection I would suggest that the management of TWA be notified, on behalf of the voting trustees, to maintain or restore the ability of TWA to reject the Boeing purchases at least until after such a meeting.

I am sending a copy of this letter to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the voting trustees. At the moment, the whereabouts of Mr. Breech are not known to us.

Very truly yours,

/s/ CHESTER C. DAVIS

A-918

Defendant's Exhibit 11-M.

[19202]

CHESTER C. DAVIS
ROOM 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

AIR MAIL

June 8, 1961

Mr. Ernest R. Breech
12723 Telegraph Road
Detroit 39, Michigan

Dear Mr. Breech:

Referring to your letter of June 6, 1961, I was not aware that Mr. Settles on my behalf had submitted a request for information directly to you. We have not yet received all of the information requested of TWA.

At the moment, I am particularly concerned as to the terms of the proposed financing which Mr. Tillinghast has described as progressing satisfactorily. I appreciate the importance of such financing to all parties concerned and, therefore, I hope that this matter will be discussed with me as a representative of Hughes Tool Company at the earliest possible moment so that any proposed arrangement may be reviewed from the point of view of Hughes Tool Company.

I also hope that you have no personal objection to the position which I am taking on behalf of Hughes Tool Company to the effect that the Voting Trustees, having the

legal power to control the Board of Directors and therefore the management of TWA, are proper persons to whom Hughes Tool [19203] Company may appeal for assistance or protective action consistent with the duties and obligations arising under the Voting Trust, which I am sure are recognized by all the Voting Trustees.

I am sending a copy of this letter to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the Voting Trustees, for his information.

Sincerely,

CHESTER C. DAVIS

A-920

Defendant's Exhibit 11-N.

[19204]

HUGHES TOOL COMPANY
EXECUTIVE OFFICES
TWENTY-SECOND FLOOR GULF BUILDING
HOUSTON 2, TEXAS

Raymond M. Holliday
Vice President

June 9, 1961

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Attention: Mr. Charles C. Tillinghast, Jr.
President

Dear Sirs:

Referring to the representations made by Mr. Chester C. Davis on behalf of the Hughes Tool Company at a conference held the afternoon of June 2, 1961, this will confirm that Hughes Tool Company has currently on order from General Dynamics Corporation thirteen (13) Model 990 (formerly Model 600) aircraft which are available to Trans World Airlines, (TWA). Hughes Tool Company claims that TWA is obligated to acquire said aircraft in accordance with past practices. Said 13 aircraft are being manufactured by General Dynamics Corporation under a Purchase Agreement dated November 10, 1960, as amended February 22, 1961 (said Agreement as so amended being hereafter referred to as the "Purchase Agreement"). The Purchase Agreement provides for the delivery of the first of said aircraft in December, 1961 and of the remaining aircraft at the rate of 3 per month thereafter through April, 1962. You should note, however, that such delivery schedule is contingent upon certain [19205] customer equipment being furnished to General Dynamics Corporation by a

specified date, and that in order to maintain said delivery schedule immediate action is required by TWA. Hughes Tool Company assumes that you are fully familiar with said Purchase Agreement. If you do not have a copy thereof, you may inspect same at the offices of Chester C. Davis, 120 Broadway, Room 3113, New York, New York, or upon request a duplicate copy will be furnished to you.

Hughes Tool Company hereby reaffirms that it is prepared to assign to TWA all of its rights to acquire said aircraft pursuant to the Purchase Agreement, in accordance with past practices, namely, in consideration of an agreement by TWA to pay:

(1) The balance of the purchase price of said aircraft;

(2) All amounts hereafter payable for customer-furnished equipment installed or to be installed in said aircraft; and

(3) The undepreciated cost of said aircraft to Hughes Tool Company.

As in the past, the phrase "the undepreciated cost to Hughes Tool Company" means the sum of:

(a) All amounts Hughes Tool Company shall have paid the vendors (in cash or with notes) with respect [19206] to said aircraft including amounts paid vendors of customer-furnished equipment;

(b) All other costs, including expenses in connection with the aircraft or other related property; and

(c) An amount representing interest on items (a) and (b) at the rate of 5½% per annum, computed on the average amount of the outstanding payments applicable to such aircraft and by considering the payments made as outstanding from the

respective dates such payments were made and until repayment thereof to Hughes Tool Company.

With respect to the suggestion made by Mr. Tillinghast at the abovementioned conference concerning adequate assurances as to the delivery dates of such aircraft, Hughes Tool Company believes that this is a matter which should be discussed between TWA and General Dynamics Corporation. Hughes Tool Company is prepared to participate in any such discussions and to assist TWA to the extent possible in obtaining appropriate assurances from General Dynamics Corporation. In this connection TWA should recognize that, in accordance with past practices and prior to the change in management of TWA, it was customary for qualified personnel of TWA to be made available to General Dynamics Corporation as a contract representative or otherwise [19207] for the purpose of complying with the requirements of any purchase agreement and to assist in and expedite the ultimate delivery of the aircraft covered by such purchase agreement.

As to the terms of payments or payment dates to be made or met by TWA to Hughes Tool Company upon the assumption by TWA of the Purchase Agreement, Hughes Tool Company is prepared to discuss same with TWA at any time. Hughes Tool Company is also willing to furnish to TWA any further information available to Hughes Tool Company which TWA requires with respect to said aircraft and with respect to the advantages which Hughes Tool Company believes would inure to the benefit of TWA from the acquisition of said aircraft by TWA. Hughes Tool Company understands that General Dynamics Corporation is prepared to join in or otherwise cooperate in the assignment of the Purchase Agreement to TWA.

In addition to the above, Hughes Tool Company reaffirms its willingness to make available or to cause to be made available to TWA, on comparable terms, 4 Convair

880's which, according to General Dynamics Corporation, would be available for delivery to TWA as follows: -

One in August, 1961
One in September, 1961
Two in October, 1961

The said 4 Convair 880's are in the process of completion with the configuration designed by TWA.

[19208] Furthermore, upon the assumption by TWA of the Purchase Agreement Hughes Tool Company would use its best efforts to cause General Dynamics Corporation to make available to TWA an additional 4 Convair 880 M's for delivery at approximately the same time as the 4 Convair 880's hereinabove mentioned.

The availability to TWA of the above mentioned aircraft depends upon immediate action by TWA.

In order to avoid any further delay in making available to TWA the 13 Model 990 aircraft and in order to insure the availability thereof to TWA, will you please indicate your willingness to accept an assignment of the Purchase Agreement by having a duly authorized officer of TWA execute in the space hereinbelow provided a duplicate of this letter enclosed for that purpose and return same to the undersigned or to Chester C. Davis, 120 Broadway, Room 3113, New York, New York.

Very truly yours,

HUGHES TOOL COMPANY

By RAYMOND M. HOLLIDAY
Vice President

ACCEPTED:

TRANS WORLD AIRLINES, INC.

By .....

Defendant's Exhibit 11-O.

[19209]

HUGHES TOOL COMPANY
EXECUTIVE OFFICES
TWENTY-SECOND FLOOR GULF BUILDING
HOUSTON 2, TEXAS

Raymond M. Holliday
Vice President

June 10, 1961

To:

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Attention: Mr. Charles C. Tillinghast, Jr.
President

Mr. Ernest R. Breech
Mr. Irving S. Olds
Mr. Raymond M. Holliday,
Voting Trustees

Irving Trust Company as Agent for the
Holders of the Equipment Notes of
Trans World Airlines, Inc.

Attention: Mr. Robert S. Kerr,
Vice President

The Equitable Life Assurance Society
of the United States

Attention: Mr. James F. Oates, Jr.
Chairman and President

Metropolitan Life Insurance Company

Attention: Mr. Frederic W. Ecker,
Chairman

Defendant's Exhibit 11-O.

Gentlemen:

Referring to previous correspondence and conferences relating to the need of Trans World Airlines, Inc. (TWA), for additional jet aircraft, the financing thereof, the interests of Hughes Tool Company and its positions relating thereto, and in an [19210] effort to arrive at a solution of the various questions involved, Hughes Tool Company hereby submits three separate and distinct proposals. You may accept any one or any two or all three of said proposals. This is also to advise you that Mr. Chester C. Davis is authorized to discuss with you said proposals and is fully empowered by Hughes Tool Company to commit Hughes Tool Company with respect to any or all of said proposals.

PROPOSAL NUMBER ONE

Hughes Tool Company hereby offers to guarantee subscription by the stockholders of TWA to an offering of 100 million dollars of additional common stock of TWA (or such other equity security or securities as may be mutually agreed upon), such guarantee to be comparable to the one agreed upon in the Hughes Financing and Subordination Agreement of December, 1960, in that Hughes Tool Company will agree to subscribe to a pro rata share of any such new offering and will subscribe to any portion unsubscribed by the other stockholders of TWA up to a maximum amount of 100 million dollars.

Should you question the ability of Hughes Tool Company to perform or its good faith in submitting the offer represented by this proposal, Hughes Tool Company is prepared [19211] to place in escrow securities of a value commensurate with such undertaking which would be forfeited in the event that Hughes Tool Company fails to perform in accordance with any obligation it undertakes pursuant to this proposal.

Defendant's Exhibit 11-O.

The foregoing proposal is open for consideration by you for a period of ten days from the date hereof. If, at the end of that period, you are favorably disposed to an acceptance of this proposal, but desire additional time for a definitive acceptance thereof, and so indicate in writing, Hughes Tool Company would give careful consideration to a reasonable request for an extension of time of the offer represented by this proposal.

It is not a condition of this proposal that TWA acquire, to supplement its fleet of jet aircraft, either Boeing aircraft or Convair aircraft or any combination thereof or any other type of aircraft. The foregoing offer, however, is conditioned upon termination of the existing voting trust with respect to the shares of common stock of TWA owned by Hughes Tool Company and the transfer and return of all of said shares to Hughes Tool Company.

In connection with your consideration of this proposal, Hughes Tool Company points out the following:

(a) Hughes Tool Company would guarantee to TWA an additional 100 million dollars of equity capital which would [19212] not only further secure the lending institutions, but would enable TWA to undertake an aggressive program for acquiring additional jet aircraft which, according to our understanding of your position, are unquestionably desired by TWA. Furthermore, with such additional equity capital, TWA should be able to obtain without difficulty adequate financing from the present lending institutions or others for expanding its present jet aircraft fleet with either Boeing aircraft or Convair aircraft or both as may be determined by the management of TWA.

(b) If this proposal is accepted, it would not be the intention of Hughes Tool Company to change the present management of TWA. The Mortgage Indenture of December 1960, securing the notes held by the lending institutions,

contains provisions which, upon termination of the voting trust, adequately protect the noteholders with respect to the management of the Company. If this proposal is accepted, Hughes Tool Company will agree to the continuance of these provisions, which are sometimes called "the management clause", without change.

PROPOSAL NUMBER TWO

Hughes Tool Company, in addition to its having guaranteed the purchase from TWA of 100 million dollars of subordinated income debentures currently offered to the stockholders of TWA, hereby offers to subscribe to an additional $11,235,900 principal amount of such debentures with warrants attached at the offering price thereof, payable in cash at the closing to be held Tuesday, June 13, 1961, provided that TWA will commit itself to acquire, and to apply said sum to [19213] amounts heretofore paid by Hughes Tool Company or now due and payable by it to General Dynamics Corporation with respect to, 13 Model 990 (formerly Model 600) jet aircraft which were heretofore ordered by Hughes Tool Company from General Dynamics Corporation for the benefit of TWA and which are available to TWA, pursuant to that commitment by Hughes Tool Company, upon terms and conditions similar to the terms and conditions under which Hughes Tool Company has heretofore made aircraft available to TWA. Said terms and conditions are more fully described under Proposal Number Three.

PROPOSAL NUMBER THREE

Hughes Tool Company hereby reaffirms that it is prepared to assign to TWA, at Hughes Tool Company's cost in accordance with past practices of Hughes Tool Company, all rights to acquire from General Dynamics Corporation 13 Model 990 (formerly Model 600) aircraft under a

purchase agreement dated November 10, 1960 as amended February 22, 1961 between Hughes Tool Company and General Dynamic Corporation. In addition, Hughes Tool Company reaffirms its willingness to make available or to cause to be made available to TWA on comparable terms four Convair Model 880's which, according to General Dynamics Corporation, will be available for delivery to TWA as follows: one in August, 1961; one in September, 1961 and two in October, 1961. [19214] Said four Convair 880's are in the process of completion by General Dynamic Corporation with the configuration designed by TWA. Upon the acceptance of this proposal Hughes Tool Company will use its best efforts to cause General Dynamics Corporation to make available, if TWA wishes to have them, an additional four Convair 880 M's for delivery at approximately the same time as the four Convair 880's. There is attached hereto, as a separate letter dated June 9, 1961, a more complete statement of this proposal.

You will notice that favorable consideration of Proposal Number Two hereinabove set forth requires action on your part on or before June 13, 1961, because Hughes Tool Company is informed that the availability of the debentures may expire on that date. If you feel that you need additional time to consider Proposal Number Two, Hughes Tool Company is prepared to discuss with you the feasibility of extending such time and to take such action as may be appropriate toward that end.

In order to expedite favorable consideration by you of the above, copies hereof are being delivered to Francis Reed, Esq., of Messrs. Hughes, Hubbard, Blair & Reed, counsel for the voting trustees and to Messrs. Cladbourne, Parke, Whiteside & Wolff, counsel for TWA. Mr. Reed has also been requested to communicate to appropriate individuals, by telephone or otherwise, as promptly as possible the substance of [19215] the above.

Defendant's Exhibit 11-O.

Mr. Chester C. Davis, who is empowered to discuss all or any of the above proposals and to take whatever action is necessary to commit Hughes Tool Company with respect thereto, will be continually available to you during the next ten days.

Very truly yours,

HUGHES TOOL COMPANY

By RAYMOND M. HOLLIDAY
Vice President

A-930

Defendant's Exhibit 11-P.

[19216]

(Telegram received by Irving Trust Co., New York City, 8:11 P.M. June 20, 1961—Telephoned to Mr. Sessel at home)

TO: MR. BEN-FLEMING SESSEL

"AS A DIRECTOR OF TWA I URGE YOU TO ATTEND THE MEETING OF THE BOARD OF DIRECTORS TO BE HELD ON JUNE 21, 1961, 9:30 AM. I AM INFORMED THAT ACTION WILL HAVE TO BE TAKEN AT THAT MEETING WITH RESPECT TO THE THREE PROPOSALS SUBMITTED BY HUGHES TOOL COMPANY TO TWA AS SET FORTH IN ITS LETTER DATED JUNE 10, 1961. ONE OF SAID PROPOSALS IS AN OFFER BY HUGHES TOOL COMPANY GUARANTEEING TO TWA $100,000,000 OF ADDITIONAL EQUITY CAPITAL. SAID PROPOSALS WILL EXPIRE JUNE 22, 1961 UNLESS ACTION IS TAKEN INDICATING A DISPOSITION TO ACCEPT SAID PROPOSAL. IF YOU ARE NOT FAMILIAR WITH THE TERMS OF SAID PROPOSAL, YOU MAY CALL ME AT THE WALDORF-ASTORIA HOTEL IN NEW YORK CITY, ROOM 2628 OR CHESTER C. DAVIS, 120 BROADWAY, NEW YORK CITY AT WORTH 2-5220."

RAYMOND M. HOLLIDAY

HUGHES TOOL COMPANY

A-931

Defendant's Exhibit 11-Q.

[19217]

HUGHES TOOL COMPANY

EXECUTIVE OFFICES
TWENTY-SECOND FLOOR GULF BUILDING
HOUSTON 2, TEXAS

Raymond M. Holliday
Vice President

June 21, 1961

To the Board of Directors
of Trans World Airlines, Inc.

Dear Sirs:

I sincerely regret that due to ill health I was unable to attend today's meeting of the Board, as I had planned. As soon as I was able to do so, I sent a message to Mr. Tillinghast informing him that I would be unable to attend the meeting, that Mr. Davis, however, was available and waiting outside the Board room. I asked that Mr. Davis be given an opportunity to appear before the Board to discuss the proposals of Hughes Tool Company set forth in its letter of June 10, 1961 and present pertinent information with respect thereto. I understand that this request was not granted and that Mr. Davis was not given an opportunity to appear at the meeting.

The primary purpose of this letter is to present to you some of my views as a director of TWA.

At the outset, I should point out that Mr. Tillinghast's letter of June 16, 1961 addressed to me at Houston, [19218] Texas, should have been addressed to Mr. Davis, because the June 10 letter of Hughes Tool Company makes it clear that Mr. Davis is the one who is authorized to discuss the proposals made therein and to commit Hughes Tool Company with respect thereto. The approach taken by Mr.

Defendant's Exhibit 11-Q.

Tillinghast in his letter, together with the fact that no one on behalf of TWA has communicated with Mr. Davis with respect to the proposals, indicates to me that an effort is being made to create a record to justify their rejection, rather than a bona fide effort to explore the advantages to TWA of the acceptance of one or more of those proposals and in particular the many important advantages to TWA in accepting Proposal Number One.

Mr. Tillinghast states in his letter that "TWA has suffered greatly from its under-capitalization of the past and we would wish to take every reasonable step to achieve an improvement in our debt-equity ratio." It seems to me, therefore, that immediate steps should be taken to indicate a desire on the part of TWA to accept Proposal Number One so that a reasonable extension of time may be sought from Mr. Davis for working out the implementation of that proposal. Mr. Tillinghast appears to be concerned that such implementation "would require approval by the Civil Aeronautics Board". It is my understanding, confirmed to me by Mr. Davis, that [19219] Proposal Number One is not conditioned upon any approval by the Civil Aeronautics Board. In other words, should Proposal Number One be accepted by TWA and should the parties to the voting trust arrangement consent to its termination, Hughes Tool Company would become committed to its guarantee to TWA of one hundred million dollars of additional equity capital pursuant to the terms of Proposal Number One, whether or not the Civil Aeronautics Board approved of such a termination of the Voting Trust or permitted a transfer of voting securities to Hughes Tool Company. Mr. Davis confirms to me that Hughes Tool Company is prepared to accept complete responsibility for obtaining whatever action may be necessary by the Civil Aeronautics Board in connection with the termination of the Voting Trust.

Defendant's Exhibit 11-Q.

Mr. Tillinghast, in his letter to me, does not appear to be adequately informed as to the circumstances which caused the lending institutions to require the Voting Trust in connection with the 1960 financing. The lending institutions were prepared to advance credit to TWA without a voting trust, based upon a management clause comparable to that in the Indenture of Mortgage, at a time when Mr. Thomas was the chief executive officer of TWA. It was only after Mr. Thomas resigned as President, leaving TWA without a chief executive, that the lending institutions insisted upon a [19220] voting trust. At a time when TWA was without a president, the management clause, obviously, did not afford adequate protection to the lending institutions because the management clause protected the lending institutions only against a change in management adverse to their interests. At present, TWA has a President and Chairman of the Board who are presumably satisfactory to the lending institutions. Thus, there would seem to be no justification for assuming that the lending institutions would unreasonably refuse to consider a termination of the Voting Trust under circumstances in which both they and TWA would have a great deal more to gain by an acceptance of Proposal Number One than by a continuation of the Voting Trust. In this connection, it should be noted also that the Indenture of Mortgage itself recognizes the possibility of the termination of the Voting Trust by providing that the management clause is to come into effect automatically when the Voting Trust terminates.

Mr. Tillinghast points out, "Present indications are that substantial financing will be needed in the next few years, additional to the equity proposed to be added." In addition to the many advantages which one hundred million dollars of additional equity capital would provide to TWA and to the lending institutions, a termination of the Voting Trust would bring about definite advantages with respect

to [19221] any needed additional debt financing. At the present time, a majority of the note holders have the absolute power to control a majority of the voting trustees, who in turn have the absolute power to control the Board of Directors. This situation unquestionably makes it difficult for the lending institutions now interested in TWA to negotiate the terms of additional debt financing without being subjected to the risks of self-dealing. A termination of the Voting Trust would eliminate that problem.

It is difficult for me as a director to understand what objection there may be from the point of view of TWA to an acceptance of Proposal Number One. I would appreciate, and even request, that each director give me whatever reasons he may have for opposing the acceptance of Proposal Number One. It seems to me that the Board of Directors in the discharge of its duties and obligations should adopt resolutions to the effect that it would be desirable for the Company to obtain on appropriate terms one hundred million dollars of additional equity capital without the payment of any underwriting fees or commissions; that from the point of view of the Company it would be desirable to accept Proposal Number One as submitted by Hughes Tool Company as set forth in its letter of June 10, 1961; that the President and Chairman of the Board of the Company be directed to communicate with [19222] appropriate representatives of the lending institutions presently holding the serial and sinking fund notes covered by the Indenture of Mortgage dated as of December 1, 1960 for the purpose of determining whether such lending institutions would consent to a termination of the Voting Trust in the event that the Company obtains a satisfactory guaranty of an additional one hundred million dollars of equity capital from its stockholders; and that the President and the Chairman of the Board be requested to submit a report in writing to the directors of the Company with

respect to the efforts made with such lending institutions, the results of such efforts and the position or attitude taken by such lending institutions, together with their recommendation with respect to Proposal Number One and the basis for such recommendation.

Mr. Tillinghast also appears not to have been adequately informed with respect to what has transpired concerning the Convair 880's, which are available to TWA. I definitely advised Mr. Leslie, Senior Vice President—Finance and Treasurer, that TWA could obtain those 880's on the basis of Hughes Tool Company's costs determined in accordance with past practice and defined in the letter of June 9 by Hughes Tool Company to TWA. My discussions with Mr. Leslie specifically informed him of the price to TWA for said aircraft. There can be no question but that TWA formally advised Hughes [19223] Tool Company that it desired said aircraft and there is no basis whatever for any implication by Mr. Tillinghast that TWA is uninformed as to the price or basis on which those planes have been available to TWA. It is true that at one time Mr. Ben Sessel, at a Board meeting, suggested that an effort should be made to obtain those planes at a distress price. Such a suggestion was, of course, rejected by Hughes Tool Company.

It seems to me that it is of extreme importance that TWA advise Mr. Davis immediately that it is favorably disposed to an acceptance of Proposal Number One, and perhaps also of the other proposals, and that the President or other responsible officer of TWA take the necessary steps to obtain from him a reasonable extension of time of the offers contained in the letter of June 10 by Hughes Tool Company.

Very truly yours,

RAYMOND M. HOLLIDAY

Defendant's Exhibit 11-R.

[19224]

CHESTER C. DAVIS
ROOM 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

June 21, 1961

Carl S. Rowe, Esq.
Messrs. Chadbourne, Parke,
Whiteside & Wolff
25 Broadway
New York 4, N. Y.

Dear Mr. Rowe:

This refers to your letter of June 20, 1961. You are in error if you are implying that I was suggesting an extension of time within which Hughes Tool Company could exercise its option to purchase the additional $11,235,900 principal amount of debentures. I made it perfectly clear to you and to Mr. Mathers that the Hughes Tool Company was not seeking any extension of time. I was merely trying to discuss with you and Mr. Mathers mechanics which would not involve the granting of time to Hughes Tool Company but which would, nevertheless, give additional time to TWA if TWA felt that it needed additional time in order to consider Proposal Number Two. The record is quite clear in that respect. The suggestion of an escrow arrangement would have required the Hughes Tool Company to exercise its option to purchase the additional $11,235,900 of deben-

tures and thereafter TWA at its option, not at the option of Hughes Tool Company, would have decided to accept or reject Proposal Number Two and concurrently received the money or cancelled the debentures issued depending on the decision of [19225] TWA with respect to Proposal Number Two.

At the closing, Mr. Mathers stated that a decision had been made by TWA. The closing proceeded, as the transcript of the closing shows, on the basis that TWA either had rejected Proposal Number Two or was unwilling to give itself additional time to consider the proposal.

I agree with you, however, that there would seem to be little purpose in continuing to correspond on the subject matter of your letter.

I am likewise sending copies of this letter to all those who received copies of prior correspondence on this subject.

Very truly yours,

CHESTER C. DAVIS

A-938

Defendant's Exhibit 11-S.

[19226]

CHESTER C. DAVIS
ROOM 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

June 27, 1961

Mr. Ronald Duckworth, Secretary,
Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, N. Y.

Dear Mr. Duckworth:

I have received your letter of June 23, 1961 and the materials enclosed therewith. In your letter you state:

> "In supplying you with the enclosed documents we do not intend to indicate that we believe we are obligated to furnish this information to you or to Hughes Tool Company.
>
> We do not believe that under all the circumstances Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA and we are, therefore not enclosing such reports."

Whether or not Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA, Mr. Raymond M. Holliday, a director of TWA, is entitled to receive such reports. In this connection, I am requesting on behalf of Mr. Raymond M. Holliday, in his

capacity as a director of TWA, the following documents in addition to those sent by you on June 23, 1961:

(1) Copies of minutes of meetings of the Board of Directors of TWA held during 1960.

[19227] (2) Copies of minutes of meetings of the Executive Committee of the Board of Directors of TWA held during 1960.

(3) Copies of all reports presented to the directors or circulated at meetings of the Board during 1960 and 1961.

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

A-940

Defendant's Exhibit 11-T.

[19228]

CHESTER C. DAVIS
ROOM 3113
ONE TWENTY BROADWAY
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

June 30, 1961

Re TWA Voting Trust

Francis C. Reed, Esq.
Messrs. Hughes, Hubbard, Blair & Reed
One Wall Street
New York 5, N. Y.

Dear Mr. Reed:

This letter is addressed to you as counsel for Mr. Breech and Mr. Olds as Voting Trustees, pursuant to their request that any matter which should be brought to their attention as Voting Trustees should be done through you as their counsel.

1. The management of TWA installed by the Voting Trustees appears to have developed a serious antagonism toward Hughes Tool Company and its owner, Mr. Howard Hughes. You appreciate, of course, the ownership interest of TWA is held by Hughes Tool Company, a Delaware corporation, and that there is no possible justification why such ownership interest should be ignored or adversely affected by reason of any personal antagonism which may exist on the part of any director or directors of TWA or any of its operating personnel toward Mr. Howard Hughes.

This antagonism becomes particularly serious when it reflects itself in a course of conduct obviously designed to oppose or frustrate any proposal, [19229] suggestion or request which is made by anyone on behalf of Hughes Tool Company. The recent course of conduct by TWA would seem to indicate that its management is primarily interested in creating a record to justify the rejection of any proposal or suggestion made by Hughes Tool Company, rather than making an effort to consider the matter in good faith on the merits. Under such circumstances, Hughes Tool Company can look only to the Voting Trustees to protect its interest in TWA, and hereby requests that the Voting Trustees inquire into the existence of any personal antagonism toward Mr. Hughes or the Hughes Tool Company by any director or individual in the management of TWA.

2. Hughes Tool Company has repeatedly requested, directly and through Mr. Holliday, information from TWA as to matters which vitally affect its ownership interest in TWA, and TWA has repeatedly refused to furnish pertinent information with respect to such matters.

For example, on May 25, 1961, requests were made to TWA, the Voting Trustees and their respective counsel for relevant papers, and particularly drafts of proposed agreements, relating to proposed additional financing by TWA referred to in the current Registration Statement of TWA. On May 29, 1961, I received a letter from TWA's counsel which advised me that no agreement concerning this proposed financing had yet been executed. [19230] This letter, however, completely ignored the request for drafts of documents which was made so that Hughes Tool Company could inform itself as to what was being proposed.

Similarly, on June 1, 1961, Mr. Holliday requested by telegram that he be advised of the exact status of the

proposed financing. Mr. Holliday informs me that he has not received such advice, and that no details with respect to this proposed financing have ever been furnished to him. In this connection you ought to note that the proposed minutes of the meeting of the Board of Directors of TWA held on May 17, 1961 state:

> "Inasmuch as Mr. Raymond M. Holliday was not present, the Senior Vice President—Finance and Treasurer was requested to apprise Mr. Holliday of the details of the financing plan."

I am informed that neither the Senior Vice President—Finance and Treasurer nor any other representative of TWA has ever apprised Mr. Holliday of the details of the financing plan.

On June 4, 1961, I again requested TWA's counsel to submit to me or to Mr. Holliday the detailed terms of the proposed financing. On June 8, 1961 I was informed by counsel for TWA that it would be inappropriate for him to furnish to me the detailed terms of said financing. It is certainly known to TWA and its counsel that I am not only counsel for Hughes Tool Company but that I am also a vice president of the Company. It is likewise well known that Mr. Holliday is not only a director of TWA but also an officer of Hughes Tool Company.

On May 24, 1961, I requested certain documents from Mr. Duckworth, the secretary of TWA, including copies of all [19231] reports presented to the directors or circulated at meetings of the Board. On June 23, I received a reply from Mr. Duckworth stating:

> "We do not believe that under all the circumstances Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA and we are, therefore, not enclosing such reports."

I do not know what circumstances Mr. Duckworth has in mind.

It is quite apparent that if Hughes Tool Company did not have its ownership interest in TWA in a voting trust, it would be able to obtain all the information which it seeks. The Voting Trustees holding the legal title to the beneficial interest of Hughes Tool Company in TWA have the power to bring about a responsiveness to the legitimate interest of Hughes Tool Company in TWA. The Voting Trustees, therefore, are hereby requested to take appropriate action to this end as well as to see to it that Hughes Tool Company and its authorized representatives obtain all information requested of TWA pertinent to the affairs of TWA.

3. TWA has violated the terms of the Hughes Financing and Subordination Agreement which is an integral part of the arrangement resulting in the creation of the Voting Trust. It is clear that under the terms of said Agreement Hughes Tool Company was entitled to have its $100 million interim note of TWA [19232] refunded at the principal amount thereof plus accrued interest to the date of refunding. The closing with respect to the refunding of said interim note was to be held within three business days after the expiration of the subscription offer to stockholders of subordinated debentures. The closing was held in accordance with said Agreement on June 13, 1961. The fact that said refunding was to be accomplished with cash and with debentures does not change the obligation of TWA to Hughes Tool Company under Section 1.4 of said Agreement. The agreement by Hughes Tool Company to accept said debentures at the same price as offered to the public does not permit TWA to claim that Hughes Tool Company is obligated to accept said debentures at the offering price plus accrued interest. Said debentures are income debentures and do not carry a fixed interest obligation. It was

TWA and not Hughes Tool Company which elected to have the conditional interest on said debentures run from June 8, 1961. The amount of interest which TWA has failed to pay to Hughes Tool Company in accordance with said Agreement amounts to $72,089.55. This matter was brought to the attention of the President of TWA and the claim has been rejected by counsel for TWA. It is the position of Hughes Tool Company that this rejection amounts to a deliberate violation by TWA of the terms of said Agreement. The Voting Trustees are hereby requested to take appropriate [19233] action to correct this default and violation of said Agreement and the arrangement relative to the creation of the Voting Trust.

4. By letter dated June 10, 1961, hand delivered June 12, 1961, Hughes Tool Company submitted three separate and distinct proposals to TWA, the Voting Trustees and the lending institutions having an interest in TWA. Two of these proposals by their terms have now expired. As stated in said letter, I was the representative of Hughes Tool Company authorized and empowered to discuss said proposals and to commit Hughes Tool Company with respect thereto. I remained continuously available for such discussions but no one communicated with me with respect to such proposals. I waited in the offices of TWA for an opportunity to appear before the Board of Directors of TWA, in the absence of Mr. Holliday who unexpectedly became ill and was unable to attend, and I was refused such an opportunity.

On June 16, 1961, the president of TWA wrote a letter to Mr. Holliday which was clearly intended to create a record to justify a refusal by TWA to accept any of the proposals set forth in the letter of June 10. I received a copy of said letter when Mr. Holliday telegraphed TWA requesting that a copy be made available to me. Certain

aspects of the letter by Mr. Tillinghast were commented upon by Mr. Holliday in his letter [19234] of June 21, 1961 to the Board of Directors of TWA, a copy of which was forwarded to you as counsel for the Voting Trustees by letter dated June 21, 1961. The statement by Mr. Tillinghast that Hughes Tool Company had not advised TWA of the purchase price of the 13 Convair Model 990 aircraft, which were ordered by Hughes Tool Company from General Dynamics Corporation, and the implication that therefore TWA was not in a position to consider Proposal Number Three, is incredible.

I do not understand how TWA could have made an intelligent business decision to commit itself for additional Boeing aircraft without having obtained all available information as to the price of other available aircraft. If Mr. Tillinghast intended to imply that TWA did not know at what price Hughes Tool Company would make such aircraft available to TWA, such an implication cannot be justified even if it is assumed that Mr. Tillinghast has not had an opportunity to familiarize himself with respect to matters which occurred prior to his taking office. Proposal Number Three sets forth quite clearly the formula for determining the price for said 13 aircraft. Furthermore, at the request of counsel for TWA, Hughes Tool Company on June 19, 1961 furnished TWA with a copy of the purchase contract it has with Convair which sets forth the basic price for said aircraft. It is difficult to understand why it would be helpful to the president of [19235] TWA for us to make a dollars and cents computation which, of course, would change every day. It is inconceivable that the president of TWA is not aware that Mr. Bew, a TWA representative, is stationed at the Convair plant on a full time basis and that complete information as to the price of Convair aircraft and as to the payments made by Hughes Tool Company on account of said aircraft was available to TWA if,

in fact, the management of TWA was interested in the information.

With respect to Proposal Number Two, I realized that since the letter of June 10, 1961 was not delivered to the addressees until the morning of June 12, 1961, the management of TWA might find it difficult to make a decision on that proposal before the closing to be held on Tuesday, June 13, 1961. I refer you to my letter of June 13, 1961 as a partial indication of the effort made by Hughes Tool Company to discuss with TWA a procedure designed to give TWA additional time in which to consider the desirability of Proposal Number Two. I made a further effort at the closing held on Tuesday, June 13, 1961. TWA and its counsel reacted to those efforts by asserting that Hughes Tool Company was seeking to delay the closing and that TWA had no authority to delay the closing. The fact is, however, that the suggestions being made on behalf of Hughes Tool Company were not to delay any closing but rather to give TWA additional time, if the management [19236] of TWA felt that additional time was needed, for the purpose of considering Proposal Number Two.

It may be suggested by the management of TWA that the failure to react favorably to Proposal Number One is based upon an evaluation of the attitude which the lending institutions may have had toward that proposal. It is submitted that a management which in good faith desired to pursue the merits of Proposal Number One would have communicated with me and would have joined Hughes Tool Company in any communication with the lending institutions for the purpose of pointing out to them the many advantages to TWA as well as the lending institutions which the acceptance of the Proposal Number One would have had. I have never received a request for an extension of time for Proposal Number One. Presumably this is because the letter of June 10 clearly stated that any such re-

quest would have to be based upon a statement of a favorable attitude toward acceptance of the proposal.

5. Hughes Tool Company submits that immediate action by the Voting Trustees is required to protect its ownership interest in TWA. It further submits that the existence of the Voting Trust is not an indication or agreement on the part of Hughes Tool Company that its views on all matters affecting TWA are to be ignored, if not actively opposed. Hughes Tool Company [19237] is presently in a position of having to rely on the Voting Trustees for the protection of its equitable interests. The undersigned has been instructed by Hughes Tool Company to remain available to discuss the above and related matters with the Voting Trustes either with or without representatives of TWA and representatives of the lending institutions, if they will permit such a discussion.

Very truly yours,

CHESTER C. DAVIS

A-948

Defendant's Exhibit 128.

[20535]

A-11356

COMMITTEE ON STOCK LIST
NEW YORK STOCK EXCHANGE

TRANSCONTINENTAL & WESTERN AIR, INC.

(Formed under the laws of the State of Delaware by Agreement and Act of Consolidation filed December 27, 1934.)

COMMON STOCK, PAR VALUE $5 EACH (VOTING)

New York, N. Y., March 29, 1940.

Transcontinental & Western Air, Inc., a Delaware corporation, (hereinafter sometimes called the "Corporation") hereby makes application for the listing on the New York Stock Exchange of:

119,154 shares of Common Stock of the par value of $5.00 per share, on official notice of issuance, and sale for cash, as hereinafter set forth, making the total amount applied for to date 1,000,000 shares. Reference is made to the previous application of the Corporation, No. A-10729, dated December 7, 1936.

AUTHORITY FOR AND PURPOSES OF ISSUANCE

The Board of Directors of the Corporation, at a meeting held February 22, 1940, authorized the issuance of 119,154 shares of the authorized but unissued Common Stock of the Corporation and authorized the management to make an agreement with Hughes Tool Company for the sale of such shares. By Agreement dated March 2, 1940 between the Corporation and the Hughes Tool Company, entered into in pursuance of the above authority, the Cor-

poration agreed to sell and the Hughes Tool Company agreed to purchase from the Corporation 119,154 shares of the Common Stock (par value $5) of the Corporation at the price of $14 per share, or for an aggregate purchase price of $1,668,156.

The net proceeds of approximately $1,659,000 (after deducting expenses in connection with the financing payable by the Corporation) to be received by the Corporation from the sale of shares of Common Stock to the Hughes Tool Company will be applied, to the extent necessary, to the payment of the balance of the purchase price of five Boeing Model S 307B Four-Engine Transport Aircraft, spare parts and accessories. The aggregate purchase price of such five Aircraft is $1,616,800 (plus miscellaneous charges) of which $397,500 has been paid. Any balance of the net proceeds remaining will be used for general corporate purposes. The Boeing Aircraft will operate at high altitudes, each accommodating 33 passengers by day and 25 by night.

* * * *

Defendant's Exhibit 157.

[20911]

TWA Interoffice Correspondence

To: Mr. R. W. Rummel
Address: 206 Airport Bldg.
City: Kansas City, Mo.

From: R. K. Rourke
Address: 206 Airport Bldg.
City: Kansas City, Mo.
Date: August 17, 1956

SUBJECT:

Reference:

(a) Boeing Report Entitled "Economic Study of Boeing/Convair and All Boeing Jet Fleets," dated 7/11/56

(b) Letter from Rourke to Rummel dated August 15, 1956

I have reviewed in part Reference (a) and my comments at this point are as follows:

Exhibits A and B, attached, reflect interpolation of the data provided you in Reference (b) to determine the number of airplanes required, providing all piston airplanes are replaced. These estimates are also compared with the Boeing fleet recommendation which was made in Reference (a).

In discussion, and based on a more normal traffic growth and assuming TWA continues with its plan to acquire 30 Convair, approximately 34 Boeing-120/320 airplanes would be needed to handle the long and express hauls. This compares with Boeing's estimate of 39. If the Convair's are not acquired, our traffic forecast would indicate a requirement for 53 Boeing's as compared to 60 estimated by Boeing. Both of my estimates assume that there will be

required a short-haul airplane to carry approximately 1.5-billion seat miles.

Exhibit B indicates that if all of the international fleet were replaced with jet airplanes, a total of 14 B-320's would be required.

Pending more detailed analyses, the following are my comments with respect to Boeing's economic study of several alternate fleets.

1. Boeing's estimate of the Convair's operating cost is slightly under our estimate but their estimate of the Boeing operating cost is approximately 25¢ per airplane mile less than our estimate. On Page 19, this would reduce the net income at various load factors by $33-million. On Page 20, that income would be reduced $23-million, therefore, at 65% passenger load factor the net income would be $55-million for the all Boeing fleet and $45-million for the Convair/Boeing fleet.

2. Also, the only comparison made by Boeing is at equal load factors. All of our estimates have shown the Boeing would be more economic in unit cost than the Convair; therefore, at equal load factors it will make more money. It was my understanding that we recognize this but our interest in the Convair was that we had a better chance of achieving its breakeven load factor in certain express service than with the Boeing. Also, we could provide the frequency and expose our seats for sale more frequently with the Convair than we could with the Boeing.

I will deal separately with Boeing's estimates as to take-off field length.

/s/ R. K. Rourke

rkr:gd

Attachments: Exhibits A & B [Deleted]

• • •

Defendant's Exhibit 194.

[21689]

MINUTES OF THE BOARD OF DIRECTORS MEETING

TRANSCONTINENTAL & WESTERN AIR, INC.

June 24, 1949

The regular meeting of the Board of Directors of Transcontinental & Western Air, Inc. was held at 10:00 A. M. Friday, June 24, 1949, at the offices of the Corporation, 101 West 11th Street, Kansas City, Missouri.

Directors present were: Messrs. Palmer Bradley
E. O. Cocke
John A. Collings
Powel Crosley, Jr.
R. S. Damon
Noah Dietrich
A. B. Eisenhower
A. V. Leslie
Sidney Maestre
Warren Lee Pierson
A. D. Simpson
N. S. Talbott

constituting a quorum.

Directors absent were: Messrs. Oscar F. Holcombe
Loyd Wright

Mr. George H. Clay, Secretary of the Corporation, was present by invitation.

Mr. Warren Lee Pierson, Chairman, called the meeting to order and thereafter presided.

The Secretary of the Corporation, Mr. George H. Clay, acted as Secretary of the meeting.

• • •

Defendant's Exhibit 194.

[21690]

* * *

RATIFICATION OF EXECUTED CONTRACT LD-60 WITH LOCKHEED FOR PURCHASE OF CONSTELLATION TYPE AIRCRAFT

There was presented to the meeting a Purchase Agreement designated Contract No. LD-60, dated as of May 31, 1949, entered into between this Corporation and Lockheed Aircraft Corporation on that date, providing for the purchase by this Corporation of 13 Lockheed Constellation Model 749A airplanes, the purchase price, as established by the Purchase Agreement, of each airplane to be payable in four installments. There were also presented to the meeting eight Letter Agreements similarly enterd into between this Corporation and Lockheed Aircraft Corporation concurrently with said Purchase Agreement and covering various related matters, including option to purchase an additional unlimited number of such aircraft.

Reference was made to Letter Agreement SL/41905, setting out the interrelationship between Contract No. LD-60 and the various Letter Agreements, and indicating that although Contract No. LD-60 called for the purchase of only 13 airplanes, it was contemplated that efforts to obtain mutually agreeable financing would proceed for 20 airplanes, i.e., as though this Corporation had exercised the option provided by Letter Agreement SL/41901 for the maximum of seven additional airplanes. The meeting was advised that the financing discussions in progress contemplated 20 airplanes, and that upon successful consummation of such financing arrangements, it would appear appropriate to increase the number of airplanes covered by Contract No. LD-60 from 13 to 20, or to whatever number between 13 and 20 might be consistent with the financing arrangements.

The Vice President and Treasurer reviewed the proposed financing arrangements.

Defendant's Exhibit 194.

After due consideration and on motion duly made, seconded and carried, the following resolutions were adopted:

RESOLVED, that the action of Albert V. Leslie, Vice President and Treasurer of this Corporation, in executing and delivering, in the name and on behalf of this Corporation, that certain Purchase Agreement, designated as Contract No. LD-60, relating to the purchase by this Corporation and the sale by Lockheed Aircraft [21691] Corporation of thirteen (13) Lockheed Constellation Model 749A airplanes, and concurrently executing and delivering those eight (8) certain Letter Agreements respectively bearing the symbols SL/41900, SL/41901, SL/41902, SL/41903, SL/41904, SL/41905, SL/41906 and SL/41907, all in the form presented to the meeting, be, and it hereby is, ratified, confirmed and approved.

RESOLVED, that the President, the Chairman of the Board, the Vice President and Treasurer, and the Vice President—Operations, or any of said officers, are authorized, in the name and on behalf of this Corporation, to increase, by exercise of option rights, the number of airplanes to be purchased under Contract No. LD-60 by one or more airplanes, but not to exceed seven additional airplanes in the aggregate, consistent with such financing arrangements as are effected with respect to the total number of airplanes to be purchased under Contract No. LD-60.

RESOLVED, that the President, the Chairman of the Board, the Vice President and Treasurer, and the Vice President—Operations, or any of said officers, and any representatives of this Corporation

to the extent any of said officers delegate their authority to such representatives be, and they hereby are, authorized to take such steps, do such acts, and execute and deliver such contracts, instruments, and documents from time to time as said officers, or representatives, deem appropriate and in the best interests of this Corporation to administer and effectuate Contract No. LD-60, and promote the manufacture, delivery, and early operation by this Corporation, of the Constellation type airplanes covered by said Contract No. LD-60; including the execution and delivery of amendments and Change Orders with respect to said Contract, the purchase of equipment, and spare engines and other spare parts for Constellation type airplanes, and matters incidental thereto.

RESOLVED, that the President, the Chairman of the Board, the Vice President and Treasurer, and the Vice President—Operations, or any one of them, be, and they hereby are, authorized to execute such additional agreements and enter into such arrangements for financing this Corporation's purchase in such form as such officers shall determine to be in the best interests of this Corporation.

[21692] RESOLVED, that the Vice President and Treasurer be, and he hereby is, authorized and directed to transfer at his discretion from time to time, but in no event when General Cash is below $12,000,000, not in excess of $8,000,000 from General Cash to a special bank account or accounts titled "Constellation Purchase Fund", such fund not to be included in the current assets of this Corporation and to be used solely in making down payments or advance down payments under financing arrange-

ments for the Constellation aircraft being purchased by this Corporation under Contract No. LD-60.

RESOLVED, that the President, the Chairman of the Board, the Vice President and Treasurer, and the Vice President—Operations, or any one of them, be, and they hereby are, authorized and empowered on behalf of this Corporation to execute such agreements and instruments and to do such other acts and things as may, in their discretion, be deemed necessary and advisable, in connection with the carrying out of any of the matters or purposes set forth in the foregoing resolutions adopted at this meeting.

Upon motion duly made, seconded and carried, the Board of Directors extended a vote of appreciation to the Vice President and Treasurer, Mr. A. V. Leslie, for the manner in which he had handled the Lockheed negotiations.

* * *

[22142]

Defendant's Exhibit 235.

MINUTES OF THE EXECUTIVE COMMITTEE MEETING

TRANS WORLD AIRLINES, INC.

July 31, 1950

A special meeting of the Executive Committee of Trans World Airlines, Inc. was held at 12:30 P.M. July 31, 1950, at the offices of the President, No. 10 Richards Road, Kansas City, Missouri.

Members present were: Messrs. John A. Collings
R. S. Damon
A. V. Leslie
Warren Lee Pierson

constituting a quorum.

There were no members absent.

Messrs. Fred G. Betts, Director—Purchasing, and George H. Clay, Secretary, were present by invitation.

Mr. Warren Lee Pierson, Chairman, called the meeting to order and thereafter presided.

Mr. George H. Clay acted as Secretary of the meeting.

* * *

PURCHASE OF SIX ADDITIONAL LOCKHEED CONSTELLATION MODEL 749-A AIRCRAFT AND TEN ADDITIONAL MARTIN MODEL 404 AIRCRAFT

The Executive Committee reviewed this Corporation's flight equipment picture in the light of potential war requirements, including the possible requisition by the

Government of aircraft from the air carriers and increased traffic demand. Reference was made to discussions between Mr. A. V. Leslie and the other members of the Executive Committee on July 27, 1950, following which this Corporation's option rights to contract for purchase of six (6) additional Constellation Model 749-A aircraft were exercised.

Upon motion duly made, seconded and carried, the following resolutions were adopted:

> RESOLVED, that the action of Mr. A. V. Leslie, Vice President and Treasurer, in exercising this Corporation's option to purchase from Lockheed Aircraft Corporation six (6) additional Lockheed Constellation Model 749-A aircraft for delivery beginning late in the Spring of 1951, and making accompanying advance payment on such aircraft in [22143] the amount of $1,383,750, be, and it hereby is, ratified, confirmed and approved, and that he be, and he hereby is, authorized to take all steps necessary to formalize any consents or waivers required under the existing agreements of the Corporation with The Equitable Life Assurance Society of the United States and various lending banks.
>
> RESOLVED, that Mr. A. V. Leslie, Vice President and Treasurer, be, and he hereby is, authorized, subject to any consents or waivers required under the existing agreements of the Corporation with The Equitable Life Assurance Society of the United States and various lending banks, to exercise this Corporation's option rights with The Glenn L. Martin Company to the extent of purchasing ten (10) additional Martin 404 aircraft for delivery early in 1952, and to make required advance payments of approximately $120,000 per aircraft.

Deefndant's Exhibit 235.

RESOLVED, that the President, Chairman of the Board, Vice President and Treasurer and the Vice President—Operations, or any one of them, be, and they hereby are, authorized to execute such additional agreements and enter into such arrangements for financing this Corporation's purchases in such form as such officers shall determine to be in the best interests of this Corporation.

RESOLVED, that the President, Chairman of the Board, Vice President and Treasurer and the Vice President—Operations, or any one of them, be, and they hereby are, authorized and empowered on behalf of this Corporation to execute such agreements and instruments and to do such other acts and things as may, in their discretion, be deemed necessary and advisable in connection with the carrying out of any of the matters or purposes set forth in the foregoing resolutions adopted at this meeting.

* * *

A-960

Defendant's Exhibit 310.

[23060]

MINUTES OF THE BOARD OF DIRECTORS MEETING

TRANS WORLD AIRLINES, INC.

December 13, 1955

A special meeting of the Board of Directors of Trans World Airlines, Inc., was held at 9:30 a.m., Tuesday, December 13, 1955, at the offices of the Corporation, 380 Madison Avenue, New York, New York.

Directors present were: Messrs. Fred W. Ayers
John E. Bierwirth
Palmer Bradley
E. O. Cocke
John A. Collings
R. S. Damon
Noah Dietrich
Arthur Eisenhower
Oscar F. Holcombe
A. V. Leslie
Warren Lee Pierson
Harry Rogers
A. D. Simpson
Thomas A. Slack
Loyd Wright

constituting a quorum.

Directors absent were: Messrs. Powel Crosley, Jr.
Sidney Maestre

Mr. George A. Spater of Counsel and Mr. George H. Clay, Vice President and Secretary of the Corporation, were present by invitation.

Mr. Warren Lee Pierson, Chairman, called the meeting to order and thereafter presided.

Defendant's Exhibit 310.

The Secretary of the Corporation, Mr. George H. Clay, acted as Secretary of the meeting.

* * *

[23064]

* * *

OPTION TO PURCHASE 8 MODEL 1049G CONSTELLATION AIRCRAFT UNDER LOCKHEED CONTRACT LD-147

It was called to the attention of the Board that officers of this Corporation recently advised Hughes Tool Company that additional Model 1049G airplanes of the Lockheed Constellation type will be needed in 1956. Upon being advised of such fact, and after further discussions with officers of this Corporation, the officers of Hughes Tool Company negotiated a contract with Lockheed Aircraft Corporation covering the purchase of five (5) Model 1049G's with an option for an additional three (3) such airplanes.

This contract (known as Lockheed Contract LD-147) was finally executed by Hughes Tool Company and Lockheed Aircraft Corporation on September 24, 1955; and the option to increase the number of airplanes from five (5) to eight (8), was exercised October 15, 1955, and is evidenced by Change Order No. 1 executed as of October 17, 1955. There was presented to the Board a copy of the executed agreement, together with a copy of Change Order No. 1, showing a basic price of $1,929,000.00 per airplane, subject to the usual Lockheed escalation provision, and calling for delivery of two airplanes in June, two in July, two in August, and two in September, 1956. The contract provides that the airplanes will incorporate all of the specification changes and improvements negotiated by this company in connection with its Contract LD-111 and will incorporate also any and all additional changes necessary to

meet any new CAA regulations. The purchase price of the airplanes is payable in two installments—25% upon execution of the contract and the balance upon delivery. The remaining terms and conditions of the contract are substantially the same as those contained in LD-111.

[23065] The Board was advised that Hughes Tool Company has tendered to this Corporation an option agreement which will permit this Corporation to acquire, at any time on or before April 30, 1956, all of Hughes Tool Company's rights under Contract LD-147 by reimbursing Hughes Tool Company for its payments made to Lockheed and its other direct costs incurred in connection with the contract, and by paying to Hughes Tool Company an additional amount equal to interest at the rate of three (3%) per cent per annum on all funds advanced by Hughes Tool Company under the contract.

The executed option agreement was exhibited to the Board and there followed a general discussion of the terms of LD-147 and the tendered option. The Board was of the unanimous opinion that the terms of the contract and of the option were satisfactory and the Board expressed its appreciation for the action of Hughes Tool Company's Board and officers in making available to this Corporation the additional 1049G airplanes.

Upon motion duly made, seconded and carried, Messrs. Fred W. Ayers, Noah Dietrich and Harry Rogers not voting, the following resolution was adopted:

> Resolved, that receipt of the option agreement submitted by Hughes Tool Company be, and the same hereby is, acknowledged and its form approved; that the officers of this Corporation hereby are authorized to assist Hughes Tool Company in the administration of Contract LD-147 and in the negotiation of specification changes in the Model 1049G airplanes covered by such contract; and that the

proper officers of this Corporation hereby are authorized to exercise the option at such time as they deem appropriate.

OPTION TO PURCHASE 25 MODEL 1649 CONSTELLATION AIRCRAFT UNDER LOCKHEED CONTRACT LD-138

Corporation's counsel called to the attention of the Board that at its meeting of January 13, 1955, a resolution was adopted authorizing the executive officers of the Corporation to accept any option tendered to this Corporation by Hughes Tool Company, for subsequent exercise by this Board at its discretion, with respect to the acquisition of the new Lockheed equipment, described as Model 1449A-01-120 of the Lockheed Constellation type. Counsel further reported that the contract of Hughes Tool Company for the acquisition of such aircraft had been amended to provide for the manufacture and delivery [23066] of 25 new Model 1649 airplanes in lieu of the earlier type, and that Hughes Tool Company has now delivered an option, relating to such new aircraft, a copy of which was exhibited to the meeting. By such instrument this Corporation was given the option to acquire all of the rights of Hughes Tool Company under the purchase agreement with Lockheed described therein (being Purchase Agreement LD-138) covering twenty-five (25) new Model 1649 airplanes, Lockheed Constellation type. There followed a general discussion of the terms of LD-138 and the tendered option.

Upon motion duly made, seconded and carried, Messrs. Fred W. Ayers, Noah Dietrich and Harry Rogers not voting, the following resolution was adopted:

RESOLVED, that receipt of the option agreement submitted by Hughes Tool Company be, and the same hereby is, acknowledged and its form approved;

Defendant's Exhibit 310.

and that the officers of this Corporation hereby are authorized to continue assisting Hughes Tool Company in the administration of Lockheed Contract LD-138 and in negotiation of specification changes in the Model 1649 airplanes covered by such contract; provided, however, that the option not be exercised until such date as may be fixed by subsequent action of this Board.

• • •